CABLE TELEVISION INDUSTRY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST SESSION

WASHINGTON, D.C., SEPTEMBER 23; OCTOBER 13; AND
NOVEMBER 4, 1981

Printed for the use of the Committee on Small Business

U.S. GOVERNMENT PRINTING OFFICE
90-548 O WASHINGTON : 1982

H721-19

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CABLE TELEVISION INDUSTRY

WEDNESDAY, SEPTEMBER 23, 1981

House of Representatives, Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems, Committee on Small Business,

Washington, D.C.

The subcommittee met, pursuant to notice, at 8:30 a.m., in room 2359-A, Rayburn House Office Building, Hon. Parren J. Mitchell (chairman of the subcommittee) presiding.

Mr. Mitchell. Good morning. The Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems, will come to order.

Congressman Addabbo, a member of the subcommittee and the full committee is with us, and he has another meeting at 9 o'clock; so I will vary the usual procedure. I will ask him to make an opening statement, if he so desires at this time, and I will follow that with a brief opening statement, and we will immediately get into the hearing.

Congressman Addabbo.

OPENING STATEMENT OF HON. JOSEPH P. ADDABBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Addabbo. Thank you very much, Mr. Chairman.

I appreciate the opportunity to join you for a few moments today. I have defense hearings—trying to bring some semblance of sanity to an insane budget so that we can move ahead with programs that should be expanded rather than be destroyed.

This is a very important hearing because we've seen so often where minorities and small businesses are given lip service by all the agencies and departments, but when they start trying to move ahead into the area of large business they see more and more roadblocks. I think one of the up and coming industries—an industry that is a new frontier—is the cable TV industry. I think this is the place where if we really mean what we say, that everyone should be part of the economic mainstream, I think this is one of the areas that attention should be given.

I see that one of my leading citizens and a former constituent will be testifying here later in the person of Percy Sutton. I wish you would convey my regrets to him that I cannot be with him, but Percy and I have been friends for many years.

Again, Mr. Chairman, I commend you for this hearing and all those who participate in it. Hopefully, the powers that be will take cognizance of what is said here and what is testified to this morning.

Thank you, Mr. Chairman.

Mr. **Mitchell**. Thank you very much.

I have an opening statement which I will submit for the record.

OPENING STATEMENT OF CHAIRMAN MITCHELL

Mr. **Mitchell**. Cities are great places to live. Indeed, if our Nation is to survive the current economic recession, it will be the cities which will lead the recovery.

It is quite clear that the cable companies realize that cities are going to be great places in which to live. More than ever before major effort is underway to persuade cities to authorize cable companies to build and run cable systems in our Nation's urban areas.

Preliminary investigation indicates, however, that cable systems still essentially exist and operate in our Nation's small and medium size communities.

As of September 1, the cable evolution has grown to the point where more than 15,000 cable television communities are reporting to the FCC and more than 11,000 of these communities have cable systems which are operational. The smallness—the mom and pop aspect of the cable industry—seems to have vanished.

In some instances small local systems have been bought out by large systems. Mergers have occurred, and we see companies from other industries acquiring many of the cable companies which pioneered this industry.

More sophisticated and increasing demands by cities have made entry to the cable business extremely costly. As a result the high cost associated with making a bid apparently has created a situation where the smaller or independent local entrepreneurs cannot or will not bid for a cable franchise.

And much like other media industries, the economic climate has worked against minority ownership interests. The presence of local minority business persons in the cable industry is about as rare as the legendary white buffalo. The latest industry figures indicate that no more than 15 local community franchises are held by black Americans, Hispanics, native Americans, and the Aleuts or Eskimos.

Preliminary investigations, however, are in no way conclusive on these matters. Thus, the major objective of today's hearing is to find out to what extent local small and minority businesses participate in the cable industry, and what are the prospects for the future.

The hearing today will telescope our attention on the specific aspects of the local cable television industry.

I am convinced by my own examinations of other industries that most megabuck industries share certain attitudes and practices which pose problems for local small and minority businesses which desire to operate or supply goods or services to that industry.

Likewise, I have found that the failure of Federal agencies to enforce Federal laws severely undermined legislative efforts to provide Government supports to small and minority businesses.

In the 8(a) program, a lack of information, internal administrative hostility and the ineffective distribution of information to the public continues to be a major hinderance to the success of this legislative effort.

The 1977 Mitchell 10 percent set-aside, another legislative effort, occurred because we witnessed, from the very beginning, the lack of proper incentives to encourage our cities and States to include local small and minority businesses at the public works trough. Similarly, minority owners and suppliers of goods and services in the broadcasting industry were fairly nonexistent until appropriate incentives were provided by the Federal Government.

It seems to me, and I may be wrong, that the cable industry is at a critical point as an industry. It is essentially regulation free—which is quite a change from 5 years ago. The cable TV industry is finding large densely populated urban areas more attractive. It is for these and the above reasons stated that I have become committed to a rigorous oversight of this industry.

Last year Congressman John LaFalce held hearings on media concentration and examined the growth of various media industries. In those hearings Congressman LaFalce and the subcommittee members asked questions about barriers to entry, capital financing requirements, and other details. Cable TV was only one of the approximately five industries on which the subcommittee held hearings.

I am not a cable TV expert, yet I do like to follow the growth, expansion, and development of our Nation's 13 million small and minority businesses. So when popular national magazines such as Business Week and Time indicate that cable TV is no longer a mom and pop operation, then I wonder why.

Are local small and minority businesses getting their fair share of this growth industry? I have noticed from my preliminary investigation that there is an appalling lack of minority cable franchises.

A few years ago, former FCC Chairman Richard Wiley characterized the minority hiring record of the cable industry as egregious. Has that sad state of affairs changed? Am I to believe that the cable television industry is callous in its disregard for local small and minority ownership and participation?

Inasmuch as we have a great deal of work ahead of us in order to understand this industry, its people and their practices, we will get started right away.

First of all, I want to thank all of the witnesses who are here and who will be coming for their cooperation in putting on this hearing.

Second, I would like to indicate that various Members—other Members of Congress—will be joining us from time to time.

Third, I don't have to indicate—it's readily apparent that I'm suffering from a very heavy cold, that I caught while participating in the Solidarity Day March on Saturday; but we'll struggle through with the hearing.

Our first witness is the Hon. Charles Royer, the mayor of Seattle, Wash., who is appearing today on behalf of the National League of Cities. He is an acknowledged expert in cable television, in its growth and development in the cities.

It is certainly very, very kind of you to take time from what must be an incredible schedule to come to this hearing. We are most appreciative.

TESTIMONY OF CHARLES ROYER, MAYOR OF SEATTLE, WASH., AND SECOND VICE PRESIDENT OF THE NATIONAL LEAGUE OF CITIES

Mr. **Royer**. Thank you, Mr. Chairman.

My schedule in Seattle I am sure is not quite as hectic as the schedule of those of you in Congress these days.

Mr. **Mitchell**. Could I interrupt you for just a moment?

I want to introduce the gentleman on my right who is not a regular member of the Small Business Committee staff—he's a special counsel that we have for the cable and telecommunications aspects of small business. This is Mr. Derrick A. Humphries to my immediate right and my staff assistant, Ms. Sarah Etheredge of the Small Business Committee.

Mr. **Royer**. Thank you, Mr. Chairman.

I am Charles Royer, mayor of Seattle, and I serve as second vice president of the National League of Cities. Over the past couple of years I have chaired the National League of Cities task force on telecommunications and cable television. So I appear today on behalf of the 15,000 cities who are either direct or indirect members of the National League of Cities.

We are really pleased that the subcommittee is undertaking this investigation of the role of small business and minority owned business in the cable television industry. As you have outlined it, it is an industry in which the big fish, at an amazing pace are eating the small ones, and we are moving into and we are seeing a growth industry with growth on the part of big organizations.

In recent years the cities of this country have taken on the first responsibility for regulating cable television. If we lose that authority which is a potential, given the legislation in Congress today, we believe that cable is unlikely to provide new economic opportunities for small business and minority owned firms around the country.

Cable has the potential to meet unique economic and communications needs of the community, which is unlike broadcasting that, as we all know, relies very heavily on concentration in three networks and network programing.

Let me quickly try to go through several factors which I believe make it imperative that the city continue to have regulatory authority with regard to cable.

First, a cable operator is almost always a monopoly provider of cable services for the area covered by the franchise.

Second, a cable system, which has a large and extensive physical plant, is built largely on public property in other words, the public rights-of-way.

Cable systems at this time provide important public services, mainly entertainment services, but in the future we all believe and know that they will provide essential services to our citizens.

Cable offers unique opportunities for locally originated and locally oriented programing and services—unique in the whole system of communication.

Cities just simply must retain the power to franchise, the power to regulate, particularly the power to regulate subscriber rates, and the power to insure local, public, community, educational, municipal, and leased access and to promote local programing.

Very quickly on the franchising process.

Now the city—a typical city—selects a cable franchise for the city or a part of the city. In my own city we have five franchise areas. We select the cable franchise after a competitive bidding process. We also set out a policy prior to the franchising process getting under way. We will, for example, as a matter of policy, have minority ownership of one of our cable systems, and that is what we have elected to do in our city. Or we will require a certain amount of local ownership or local participation.

We put out a request for a proposal [RFP] which includes these policies and these desires of the city. After we go through the financial capacity and the proposals of each competitor for the franchise, we select a company which has demonstrated the capacity to meet the needs of our own community.

We negotiate a long-term contract, generally 15 years—the franchise agreement—in which the cable company is obligated to meet our service requirements and meet the service commitments that the franchise grantee makes in the contract.

We maintain significant regulatory powers, powers which we believe are essential in order to gain compliance with the elements of the franchise agreement.

NLC's code of good cable television franchising conduct encourages cities to adopt open and structured franchising procedures that encourage participation by the public, community groups, and governmental agencies and institutions. Such active involvement is essential to insure that the cable system meets the entire community's needs. A careful and structured process will insure that the cable company's ownership and programing reflect the community's concerns.

On ownership issues which are most important to this committee's consideration we may determine that as a city, that our community's communications needs can only be met by a publicly owned system. In other words, the city will own the system. And several cities have decided that is the best course of action.

Public ownership can take a number of forms, besides municipally owned systems, including cooperatively owned systems or systems owned by a public nonprofit corporation. These forms of ownership can be used to guarantee local involvement in building the system and producing the programing and services for the system.

A publicly owned system may very well be the best method for providing increased opportunity for local or minority owned businesses in constructing and servicing the system.

Sometimes the city will decide—most often—that a private system is more appropriate. Once the city makes that decision it may decide that a certain ownership structure is essential to meet the community's needs. For example, we can say in the request for proposal that ownership involvement of local citizens, minorities and women, community groups, public institutions—all of those are required or desirable.

If such preferences are included in the RFP, the city must also have the ability to enforce those provisions—to provide safeguards, and to prevent subsequent sale of the cable system that may make local involvement meaningless. It may, in other words, be an upfront sham in order to meet some requirements of the RFP.

If we do not have regulatory power, we have no means of enforcing the terms of the agreement and working against that kind of sham.

Some options for dealing with these local ownership agreements are making clear in the RFP any preferences which will be given for local ownership or for special types of local ownership; requiring full disclosure of all parties with any ownership interest; stating in the request for proposal that investment by local citizens or institutions must be bona fide investment; and stating in the RFP that ownership transfers will be barred for a specified number of years.

When cities are the primary regulators of cable, they have the power to insure that the city's system is responsive to the community's needs. If Congress should bar public ownership—which is under consideration in a number of major cities—or limit the city's power to regulate and to oversee a private cable company's performance, then cable is unlikely to provide locally oriented services and increase local economic opportunity.

Finally, a word about the growing concern over media concentration.

As conglomerates—and this morning on the front page of the Post we looked at a potential marriage between CBS and A.T. & T. which are two rather large organizations—they begin to assume a dominant role in the cable industry and the need for local control becomes even greater.

Federal law does not limit multiple-system ownership—that is, vertical integration of multiple systems operators or ownership of cable systems by newspapers.

In contrast the FCC does limit broadcasters to one license in a market and no more than seven nationwide.

Just a couple of figures, Mr. Chairman.

In 1970 the largest 25 cable system operators served only 46.7 percent of all cable system subscribers. By 1980 that figure had risen to 68 percent. In 1979 nearly 79 percent of all cable systems were owned by corporations with other media interests. About 33 percent were owned by corporations with broadcast interests, and about 18 percent by corporations with program production and distribution interests.

We do not believe the Federal Government has yet given adequate attention to that major problem of concentration and cross-ownership.

Finally, the regulatory framework for cable television—which is still evolving—needs to insure that local governments are the primary regulators of cable television. Only that kind of system, only that kind of regulation, in my opinion, can enable small business and minority business to have access to new business opportunities in constructing the plant and servicing the system, and producing the programing.

Without such regulatory powers, cities will have the responsibility for selecting the community's cable company, but not the power to insure that the chosen company meets the community's needs. The evolving ownership structure of the cable industry suggests that we are headed into a period of increased conglomerate domination of telecommunications. The promise of cable is that it will provide each community with a comprehensive communications system. We hope that we are not going to end up with a cable industry which is little different from the existing network-dominated broadcasting industry. If cable simply becomes another such system, with programing decisions made in Denver, New York, and Los Angeles it is not likely to increase the availability of locally oriented communications services.

The promise of cable is its capacity to provide locally oriented programing and a range of programing and services which reflect the communications needs of all population subgroups. City officials are becoming more sophisticated in developing cable systems which accomplish these goals. We hope that Congress will not limit local control—by barring rate regulation, programing requirements, or public ownership—at this crucial juncture in the development of the industry. City officials need strong regulatory powers to insure that the community's cable system reflects the needs of all the community's residents and maximizes the economic opportunities for small businesses and minorities.

We believe—and I have a background in broadcasting—and I believe that this cable industry is the last, best opportunity for minority participation in the communications system of the country. It is a good opportunity; it is one in which there is access across the economic spectrum; and it is an area which the Congress ought to insure that minority and small business opportunity exists.

Thank you, Mr. Chairman.

I will be pleased to respond to any questions you may have.

Mr. Mitchell. Thank you, Mr. Mayor, for a very cogent statement.

[Mr. Royer submitted the following for insertion in the hearing record:]

CABLE TELEVISION
Reprinted from Nation's Cities Weekly
National League of Cities
April 13, 1981

NLC Franchising Code: A Fair Approach to Cable

by William Drake

NLC's Code of Cable Television Franchising Conduct, which outlines basic principles of fair franchising, is aimed both at protecting the public and assuring fair treatment of cable franchise bidders.

Code guidelines focus on franchising procedures, cable ownership issues, financial disclosure requirements and lobbying rules. In addition, the document lists examples of specific approaches cities have used.

Mayor Charles Royer of Seattle, who heads NLC's Task Force on Cable Television and Telecommunications, the group that devised the code, notes that the code has received considerable attention from city officials, the cable industry and from members of Congress.

"The code makes it very clear that cities are committed to obtaining the best possible cable services for their citizens and to treating franchise applicants fairly in the process," he says.

The cable industry's reaction has been positive. Thomas Wheeler, president of the National Cable Television Association, recently told NLC that his association agrees with the code's "ethical and procedural guidelines."

Adherence to the code is voluntary.

Council Member James Bond of Atlanta, vice chairman of the cable task force, who reports that the group has worked hard during the past year to develop the code, says he believes it will be "a valuable tool" for cities involved in cable franchising.

See p. 4, col. 2

A message from NLC Executive Director Alan Beals . . .

In recent months, cable television issues have become increasingly significant to the nation's cities.

Many communities are now evaluating cable, engaged in franchising, administering current franchises or looking toward renegotiations. As a result, cable television is among the issues designated by NLC's board of directors as a priority issue for 1981.

Cable brings both opportunities and challenges to cities, and many officials are working hard to see that its great potential is realized and that the residents of our cities receive the best possible services.

On behalf of NLC's board of directors, I commend the Task Force on Cable Television and Telecommunications for its work in drafting the Code of Cable Television Franchising Conduct, reprinted on the following pages.

The board, which unanimously adopted the code on February 28, 1981, recommends that cities individually consider adopting franchising procedures that both carry out the code's principles and meet local needs.

Charles Royer

Officials Caught Up In Industry's Race To Tie Up Franchise

Like it or not, city officials find themselves standing on the finish line of a hotly contested footrace the race by the cable television industry to win urban franchises.

The race is frantic. Most observers believe that virtually all cable television franchising in major markets will be completed by the end of 1983. And since most franchises are for 15 years, cable entrepreneurs see the situation as "do or die."

The financial stakes are high. Building the average cable system costs between $300 and $500 per subscriber. But cable systems now sell for about $600 to $800 per subscriber. There is even a market for cable franchises themselves, before construction of the system.

In granting a cable franchise, city officials are awarding a document that is very valuable. Overall, cable industry revenues are expected to reach $2.4 billion by the end of this year and to double to $5 billion by 1985.

As a result, franchise applicants often exert massive marketing pressure on city officials. And this pressure further complicates an already complex set of decisions local officials must make concerning a host of legal, technical, social and even ethical issues.

In many areas of municipal decision making, officials can learn from similar experiences in other cities. But with the cable industry scrambling to tie up franchises simultaneously in cities across the country, the chance to share experiences is limited.

Cable television began as a way to improve television reception, mainly in isolated rural or moun-

See p. 4, col. 3

Guidelines Help Cities Avoid Common Pitfalls With Careful Planning

by Susan McAdams

Across the country, communities and city officials are being investigated, sued and criticized in the press over allegations of wrongdoing in cable television franchising. The source of these allegations or charges is often a disgruntled cable company that lost a franchise bid.

NLC's Code of Cable Television Franchising Conduct is aimed at helping cities avoid such pitfalls through a carefully planned and executed franchising process.

Barry Elson, vice president of United Cable Television Corporation, told a recent Colorado Municipal League cable television workshop that in his experience "the single most common cause of lawsuits is the city changing the ground rules in the middle of the franchising process." Such procedural changes have often been in response to a franchise applicant "upping the ante," after realizing that another applicant has made a stronger proposal.

Other legal actions or criticisms have been based on last minute reversals stemming from new information about an applicant, city council decisions that, vary widely from the recommendations of a consultant or citizen advisory committee, influence peddling or even bribery.

Consider the following scenarios (taken from various city experiences):

> City A received written proposals from five applicants for the cable franchise. Based on an evaluation of technical, financial and service features, staff ranked the proposals. At the city council meeting prior to the final award, the applicant ranked next-to-last by the staff offers to pay the city one million dollars in prepaid fees if it wins the award.
>
> City B's council, after much debate, adopted a cable TV ordinance setting the procedural framework for the franchising process and minimum requirements of the eventual franchisee. Included was a list of criteria that would be used to evaluate proposals. After receiving the proposals, the city realizes that new technology and services have evolved since the time the ordinance was passed, and that the evaluation criteria do not account for features now considered essential.
>
> On Saturday, the president of city C's council played tennis at the community center. As usual the players, all involved citizens and community leaders, discussed civic matters after a doubles set. As the discussion turned to the upcoming cable franchise decision, one individual made several points about specific cable services he thinks should be made available.

See p. 4, col. 3

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Nation's Cities Weekly
April 13, 1981

National League of Cities Code of Ca

Cities around the country are currently engaged in various phases of cable televison franchising or renegotiation. The cable franchising process is a complex one, involving a broad range of technical, economic and social issues. The decisions made by local officials will have a long term effect on the types of cable services available to the people. While this code focuses on the franchising process, city officials must be aware throughout that process of the many ongoing issues of cable regulation, franchise administration and enforcement and quality of services.

The bidders in the franchise process are typically well-financed and exceedingly competitive. Extreme marketing pressure is sometimes exerted on city officials. Allegations of competitive abuse on the part of the cable industry and conflict of interest on the part of city officials and influential citizens have frequently arisen.

This National League of Cities' Code of Cable Television Franchising Conduct is intended to serve as a guide for cities dealing with the cable industry during franchise negotiations. This code attempts to articulate basic principles and identify related options for cities. The code is a guideline and adherence to it is strictly voluntary on the part of cities.

The City Role

Cities have an important and proper role in cable television franchising and regulation. Several factors set the context of that role. Cable operations have a quasi-monopoly status. The kinds of services delivered over cable systems are becoming increasingly desired by and essential to the public. Cable provides unique opportunities for locally originated and locally oriented programming and uses. Each of these factors makes it imperative that cities have and retain the ability to franchise and regulate local cable systems in order to assure that the public interest is protected and served. The federal level also has an appropriate role in establishing minimum technical standards. Among the powers that should reside with city government are:

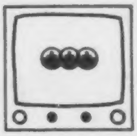
(1) the power to franchise
(2) the power to regulate, including rate regulation of cable services, and
(3) the power to assure local public, community, educational, municipal and leased cable access and to promote local programming.

Franchising Guidelines

A. The franchising process should be open.

The process should be planned so as to allow for and encourage participation by the public, community groups and governmental agencies and institutions. The following are some (non-exclusive) procedures that have been used:

(1) a prefranchising educational process aimed at both local officials and the public. The purpose of such a process is to inform relevant officials, community groups and the citizens about the potentials of cable and about the franchising process itself.
(2) public hearings both at the outset, when the structure of the process is being planned, and after proposals have been received and are being evaluated.
(3) appointment of citizen task forces to assess community needs and evaluate the potential of cable for serving those needs, and to continue after the cable system is established to help mobilize community resources in meeting the identified local needs.
(4) appointment of an interagency task force to assess municipal government needs and evaluate the potential of cable for serving those needs, and to continue after the cable system is established to help mobilize local governmental resources in meeting the identified local needs.
(5) appointment of a citizen advisory group and/or cable consultant to evaluate proposals and recommend an award.



B. The franchising process should be structured, should provide certainty for parties, and should provide full information needed by applicants.

The rules that will govern the process should be made clear at the outset, and all parties should be informed of them. A reasonable timeframe for the process which lists the steps to be taken and projects their timing should be predetermined. The timing should be changed only if necessary and with adequate notice. The announced period between the issuance of the Request for Proposals (RFP) and the deadline for proposals should be especially firm. The RFP should include full information needed by potential applicants, including the criteria that will be used in evaluating proposals. Once the RFP is issued, changes in rules or requirements should be avoided if possible. If changes must be made, they should be formally adopted, made in writing and publicized.

C. The franchise fee, if any, should be predetermined.

It is reasonable for cities to collect a franchise fee from cable operators. These revenues may be needed to defray the costs of cable franchising, regulation and monitoring and to support local cable programming. However, it is preferable to predetermine the size of the franchise fee, in terms of percentage of revenues, and to state the level of the fee in the RFP. In this way, the franchise fee does not become an item of competitive bidding. Thus, a potential appearance of inappropriate motivation on the part of the city is avoided and greater attention can be paid to the substance of the proposals. Additionally, the RFP should state whether any prepayment of franchise fees will be required or accepted. The franchise agreement or ordinance should include provisions to take effect should federal regulations concerning franchise fees be changed. Any other applicable taxes or fees should be fully explained in the RFP.

D. Procedures and formulas for recovering the costs of franchising, if they will be used, should be predetermined and uniformly applied.

It is typically the case that the city's franchising costs will be recovered from the applicants. Any nonrefundable application fee should be specified in the RFP. If additional costs not covered by the application fees are to be reimbursed by the company eventually awarded the franchise, this should also be specified and a reasonable upper limit set. The types of costs to be covered should be enumerated.

E. The franchising process should be deliberate.

Adequate time is needed for all interested parties to be heard and for city officials and staff to become familiar with the issues, economics and technology. Experience in various cities has suggested that a common time period is nine to twelve months. However, this can be expected to vary widely.

F. Elected officials should be involved in and informed about every step throughout the process.

The franchising process is likely to require significant staff work and citizen advisory groups and independent cable consultants may be involved. However, the ultimate responsibility typically rests with the appropriate elected officials, so their continuing involvement is important.

G. Any inquiries made to other cities about applicants' performance should be formal and uniform.

Inquiries to other cities about the level of performance of cable companies operating within their jurisdictions can provide important information on applicants. However, the inquiry procedure must be fair to all applicants. The inquiries should be formal, with the same questions asked in each case, and a reasonable sample of cities should be asked.

H. Any inquiries made to other cities about consultants' performance should be formal and uniform.

In deciding whether to engage a professional cable consultant and in choosing a particular consultant, cities may wish to inquire about the performance of consultants in other jurisdictions. In order that effective information be gathered, and that the process be fair to potential consultants, this inquiry process should be formal, with the same questions asked in each case, and a reasonable sample of cities asked.

Ownership Issues

A. If a city decides to require or give preference for specified ownership interests, clear guidelines need to be established.

In assuring that the franchise will serve the public interest, cities may determine that certain types of ownership interest in the cable company are either necessary or preferred. A city may decide to own the cable system itself. If the city decides to grant a franchise, however, it may also decide that certain ownership interests are desired.

Ownership involvement on the part of local citizens in general, minorities and women, community groups or public institutions are factors that have been required in RFPs or been given preferential weight in competitive evaluations. Some cities have concluded that such ownership involvement can be beneficial in encouraging the cable system to be more responsive to local needs. If such ownership preferences or criteria are adopted, the city should consider adopting safeguards regarding later sale of the cable system that might thwart the city intent. Some cities have barred ownership transfers for some specified number of years. Others require that city approval be obtained for any significant transfer of ownership

Reprinted from Nation's Cities Weekly

Nation's Cities Weekly
April 13, 1981

ble Television Franchising Conduct

Allegations have arisen that, in some cases, showings of local ownership have not indicated functional involvement in the proposed cable operation. This allegation has arisen especially in cases where the ownership interest is given to local citizens or institutions free or for far less than actual value. A related issue is whether future cable subscribers should be required to pay, through increased subscription fees, for such equity "give-aways."

Among (non-exclusive) options for dealing with these local ownership issues are:

(1) making clear in the RFP any preferences that will be given for local ownership or for particular types of local ownership.
(2) requiring full and timely disclosure of all parties with any ownership interest and the amount of investment made by each party, and any other inducements or considerations given to any party.
(3) stating in the RFP that bona fide investment by local citizens or institutions is desired, and therefore proposals containing any of the following elements would be looked on with disfavor:

  (a) if any investor's percentage of stock is greater than the percentage of dollars or services actually invested.
  (b) if investors have received loans from the cable company with which to purchase stock.
  (c) if the cable company guarantees investors little or no financial risk.
  (d) if the interests of the local owners can be bought out readily or at a guaranteed price.

(4) stating in the RFP and providing in the franchise agreement that a portion of investment equal to the proportion of uncompensated transferred equity will be excluded from the investment base on which the rate of return is calculated for purposes of rate regulation. This approach reflects the apparent willingness of the cable firm to forego the profits on the portion of equity "given away."

B. Applicants should be required to disclose all present and former corporate parents, owners, partners, affiliates, subsidiaries, and ownership interests in any other firms or ventures.

Such disclosure should be required of applicants, their principals and their immediate families.

C. Cross-ownership of local communications media is an appropriate concern of franchising cities.

In safeguarding the public interest, cities should consider whether granting a cable franchise to a particular applicant would result in an increased concentration of media ownership. Cable has become an important medium for the dissemination of information to the public. If one individual or firm controls multiple information sources in a locality, the public interest may be adversely served.

Financial Disclosure

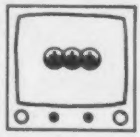
Clearly, a franchising city must require sufficient information from applicants to be assured that adequate funds are available to build and operate the proposed system. In order that potential conflicts of interest can be discovered and competitive activities evaluated, applicants should be required to disclose certain other financial and expense information. Similarly, public officials, key staff, consultants and members of official citizen advisory groups should disclose any potential conflicts. The particular approach to financial disclosure adopted by a city, of course, must be compatible with applicable state and federal law.

A. Applicants should be required to disclose all transfers or agreements for transfers of cash or other assets.

Certain transfers of assets may be commendable while others may raise questions of conflict of interest or influence peddling. In any case, the city should require full and timely disclosure of all transfers or agreements for future transfers of stock options, cash, property or other considerations or inducements on the part of applicants or affiliated persons or entities.

B. Applicants should be required to disclose all expenses made in seeking the franchise award.

Applicants should be required to periodically provide information on expenses incurred by the local company, its parent company, partner(s) or joint venturer(s) in seeking the award. The disclosure should include expenses for lobbying, public relations, marketing, advertising, research, salaries, legal fees, personal service agreements, contracted services, campaign contributions and donations or gifts to local individuals, groups or institutions.



C. City officials, key staff and members of official citizen advisory groups should be required to disclose any potential conflicts of interest.

Such disclosure by public officials is often already required by local laws and procedures. If it is not, or if key staff members are not covered, special requirements may be needed. Disclosure of any financial interests in applicant or affiliated firms and any potential conflict arising from professional or personal affiliations should be required. Any financial or other consideration given by applicants or affiliated parties should also be disclosed, including any trips taken at an applicant's expense, such as to tour operating cable facilities. During the franchising process and throughout the franchise term, campaign contributions made by franchise bidders, cable operators, or any affiliated parties should also be disclosed.

D. Any consultant used by the city in relation to the franchising process or ongoing cable administration or regulation should be required to disclose any potential conflicts of interest.

Disclosure by consultants should include any corporate, financial, professional or personal affiliation with any persons or firms holding any interest in cable companies or affiliated firms. Any financial, professional or personal relationship with any local official or responsible staff should also be disclosed. Disclosure of all other governmental jurisdictions, firms or other parties for whom the consultant has consulted or is currently consulting or has otherwise been engaged should be required. If the consultant has recommended franchise awards to one or more bidders in other jurisdictions, a complete listing of the firms previously recommended in each instance should also be required.

Lobbying Rules

A. Clear rules governing lobbying activities should be established.

The purpose of clear lobbying rules is both to protect the public interest and to make the franchising process fair to all bidders. On many questions arising during the franchising process, the best sources of information are the applicants. It is important that city officials and staff have access to that information. It is also important that all of the applicants have an equal opportunity to be heard. A number of approaches have been taken on the lobbying issue. Whatever specific approach is adopted, the rules must be made clear at the beginning of the process and must be uniformly applied. Among lobbying rules that have been adopted by cities are:

(1) **Lobbyist registration.** Any person who is paid or otherwise compensated to make statements or otherwise influence action in favor of an applicant can be considered a lobbyist. Some cities require that all cable lobbyists register with the city and disclose any money spent in the course of contacts with city officials or personnel.
(2) **Disclosure of all spokespersons.** Applicants may have a number of spokespersons who may not commonly be considered to be lobbyists. Some cities require a periodic listing of all persons who will be speaking on behalf of an applicant to avoid this definitional problem.
(3) **Disclosure of contacts with elected officials or key staff.** Contact by applicants can be allowed, but disclosure of all such contacts required. Often, a transcript or summary of these discussions is required to be filed.
(4) **Assuring fairness in industry contacts with elected officials.** Contacts with elected officials can be handled in a number of ways. Some cities have prohibited all contacts after some predetermined point in the franchising process when all parties have had a fair opportunity to be heard. Others have prohibited contact with individual council members, or have required that all contacts be made in public sessions only. Another approach has been to require that all contacts not made in a public session be in written form and included in the public record.
(5) **Assuring fairness in contacts with city staff.** The same procedures that are adopted regarding contacts with elected officials can be applied to staff as well. Some cities have required all applicant contacts to be made through a single designated staff member. Others have required applicants to submit information requests, and then arranged to provide the same information to all applicants.

B. All applicants should be given a fair opportunity to be heard.

Typically, a public hearing is held at some point after the proposals are received to allow applicants to present their proposals verbally. All applicants should be given an equal opportunity and time to make such presentations.

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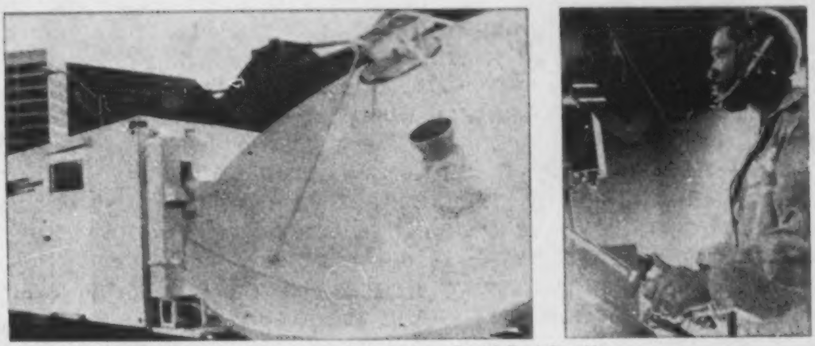

Cameras at the 1980 NLC Congress of Cities (right) broadcast live programs to cable access channels via satellite uplink. Photos by Picture Atlanta

City Responsibilities Continue Long After Franchises are Awarded

"Don't franchise and forget," advises Frank Greif, director of Seattle's Office of Cable Communications and chairman of the National Association of Telecommunications Officers and Advisors.

City officials' responsibilities in cable television matters don't end with the award of the cable franchise. When a city awards a cable franchise, license or permit, it is granting a special privilege to use the public right-of-way. In practice, the city is also granting a monopoly, since the large investment involved makes its a near certainty that only one cable will be laid down any one street. Cities, therefore, have reason to assure that the cable system operates in the public interest.

Like any city contract, the cable franchise agreement contains promises of performance. The city must monitor the actual performance of the franchisee throughout the term of the agreement to be sure the promises are kept.

Most cities regulate the rates cable companies charge for basic service—the service all subscribers receive for the flat monthly charge, not including special "pay" channels such as those featuring movies and sporting events. When the cable company wants to change its basic subscription rate, city approval is usually required. Some cities have found that rate increase requests provide a good opportunity to assure that the cable operator is living up to the franchise agreement.

Franchise agreements usually entail commitments to wire all neighborhoods on a certain schedule, repair any installation damages, respond to consumer complaints, provide certain minimum services and provide local access channels and production facilities. The actual list of franchise provisions is, of course, much longer and contains elements particular to the locality.

Cable's communications channels can also be used to offer programming and information to people with special needs and interests. Suburban communities, for example, may receive broadcast television news only from the large central city. Local access cable channels can bring suburban residents news and information about their own community. But if such cable use is to flourish, the city cable office and active community groups need to work together.

—*Susan McAdams*

Pitfalls from p. 1

On Monday, the city council president discovers that her tennis partner (and former campaign manager) has been given a 20 percent ownership share in one of the firms applying for the cable franchise. His actual investment, it turns out, was $200.

Upon further investigation, it appears that a former mayor, the brother-in-law of another council member and the minister of the city's largest church all have similar ownership interests in various applicant firms. The newspaper starts referring to the situation as the "rent-a-citizen" phenomenon.

After careful deliberations, city D awarded the cable franchise to a locally owned firm that appeared to be committed to meeting local needs. Three months later, before any cable is laid, the firm sells the franchise to a national company for a sizeable profit.

These hypothetical examples only hint at the true complexity of situations city officials encounter during cable franchising. A city's responses can reflect the soundness and integrity of the administrative and deliberate procedures addressed by NLC's Code of Cable Franchising Conduct. ☐

NLC Code from p. 1

Serving with Royer and Bond on the task force are: Council Member Kenneth Blackwell of Cincinnati; Mayor Thomas Cooke of East Orange, N.J.; Mayor Edward Koch of New York City; Mayor Karen Miller of Reading, Pa.; Mayor Jack Nelson of Beaverton, Ore.; John Patriarche, director, Michigan Municipal League; City Manager George Schrader of Dallas; Council Member Joanne Showalter of St. Paul; Council Member King Trimble of Denver; Mayor Joseph Walsh of Warwick, R.I.; City Manager Wayne Wedin of Brea, Calif.; Leigh Wilson, executive director, North Carolina League of Municipalities; and Council Member Thomas Volgy of Tucson.

Advisory members of the Task Force are: William Kuehling, assistant to the mayor of St. Louis; Anne Meier, director of the Department of Energy and Telecommunications in Columbus, Ohio; and Marvin Rimerman, director of the Mayor's Office of Telecommunications in Baltimore. ☐

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Franchising Race from p. 1

tainous areas. When new types of cable programming became available, the industry quickly became interested in cities.

With the advent of satellite distributed programming, the industry and its marketing techniques became much more complex. Suddenly cable was more than just clearer television signals. All-movie and sports channels, 24-hour news, live cultural event coverage, all-day children's programming, foreign language programming and even more specialized viewing became available. Consumers in areas with good TV reception were willing to pay for cable in order to receive these new services, and this opened up lucrative urban markets.

Cable's ability to offer many channels (systems with 104 channels have been proposed) allows it to do more than retransmit broadcast television and satellite fed programs. Some of its channels can also carry local voices that represent community diversity, voices that have never before had such an opportunity.

City officials' decisions about cable will affect the services available in their communities. Realizing that these decisions are harder to make in the midst of extreme pressure, Council Member Joanne Showalter of St. Paul advises: "Cable industry marketing and the public interest need not always be at odds. But city officials must independently evaluate proposed services against local needs." —*William Drake*

More Information Available

For more information about the Code of Franchising Conduct, or about cable television and telecommunications, contact NLC's Telecommunications Project, Office of Membership Services (202) 626-3115.

For information on legislative matters, contact Cynthia Pols in NLC's Office of Federal Relations, (202) 626-3020.

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Mr. MITCHELL. Congressman Rangel, who is not a member of this full committee or subcommittee, is present with us. Simply because of his enormous power in the Congress, he is automatically a member of any committee that he wants to attend. I am delighted that you could be with us. And Congressman Hatcher who is a member of the full committee has joined us.

Mr. Mayor, one of the reasons, one of the motivations for this hearing, is the growing concern about the monopolistic trend, the concentration that is developing vis-a-vis cable. I am very glad that you spoke to that issue. I think it is most unhealthy. In and of itself it is an unhealthy development in terms of just economic growth. But certainly it is unhealthy in terms of an opportunity for small and minority businesses to participate.

Now, you have given us very strong reasons why there ought to be local control. The industry would argue that cable is a nonessential service and that no other nonessential services are regulated. How do you counter that argument?

Mr. ROYER. Well, other nonessential services are regulated.

First of all, the FCC does regulate broadcasting, and I suppose one could argue that television is a nonessential service. If one has a radio, one is able to receive emergency broadcast warning system information. But I think that the best response to that argument is we are talking about the future here, not the present.

And the future of cable television is that of an essential service, an information system, a two-way system. The capacity of these systems is up to 100 channels or more for burglar alarm systems; security systems; for those kinds of two-way activities that connect the citizen to his or her government; and that connect someone closed in to his home to basic information services. These are essential services.

Mr. MITCHELL. I suppose that same reply could almost be put to the other argument raised by the industry that it is not a public utility and therefore it should not be regulated. It seems to be some of the things that you have just said would counter that argument or would respond to that argument at least.

Mr. ROYER. One of the major problems, Mr. Chairman, in trying to determine appropriate regulation, is that no one has really determined what cable television is. Is it a public utility? Is it primarily an entertainment system? Is it a common carrier? What is cable television? And the definition really has not yet been made, which is why regulation, attempts to reregulate must be slowed, I think, and done in a very careful and conservative way because we do not know what we might be foreclosing by rapid regulation.

And the cable companies—the big ones—are coming at the Congress today with real urgency. They are talking first amendment problems. They are coming at the Congress to say you have to regulate now. You have to take the cities out from responsibility in regulation of cable. You have to take over. I believe their sense of urgency is predicated on getting control now while the situation is in flux and uncertain and the definitions are not clear, and the future is not set for cable.

So, I would argue for, in the absence of definition, careful and conservative, almost status quo kinds of regulation, with an eye toward incentives for local minority and small business ownership.

Mr. MITCHELL. I have just one other question I will put to you. I have the impression that more and more the industry is pushing for a single franchise in cities. I also have the very distinct impression that the best way to enable participation on the part of small and minority businesses would be through a multiple franchise.

You have multiple franchise in your city. Can you share with the subcommittee your own observations as to how has it worked? Has a multiple franchise worked well? Would you recommend it for other cities? What safeguards, what regulations, what guidelines would you recommend if a city would opt to go the multiple franchise route?

Mr. ROYER. We made a decision at the outset and we have had cable in Seattle for a long, long time. We are a city of hills, it is an essential service in Seattle because you cannot receive an over-the-air broadcast system or signals in many parts of the city.

We made a decision at the outset that of our five franchise areas one would be a local, minority owned business. We have a strong minority and women enterprise ordinance in the city, with set-asides, and we made the determination that we would have a minority owned system.

We also made the decision that we would have multiple franchises because we liked the notion of competition.

So we granted the first three franchises to two companies. We have granted the first two franchises—Viacom and Teleprompter—and then put the third franchise up through a request for proposal.

We think that was a good system because when we put the third franchise on the table, or the third opportunity on the table, the two existing systems began to do what they had promised to do when we gave them the franchises. They began to wire the city; they began to wire their areas. Their performance improved 100 percent. Complaints went down. The quality of programing went up. So they were in competition for that third franchise and as a result performed extremely well.

And we used their performance in the city as one of the measurements in granting the new franchise. And one of those systems got the third franchise.

Also, one of those operators very likely may form a bona fide joint venture with a minority firm to wire the fourth part of the city.

And I say bona fide because there is a lot of rent-a-citizen, there is a lot of what we call rent-a-citizen—which is what it is—and there is a lot of sham and sleight of hand in trying to show that you are, as a firm, minority owned or you have local participation.

We believe with a multiple system we get to know the companies who are in our city, we use their performance as a measurement in granting another franchise—we just believe it is better than the single franchise, by far.

Mr. MITCHELL. Thank you very much. I have additional questions, but I would submit them to you hoping that you will cooperate and give a response.

Mr. ROYER. Yes, sir.

Mr. MITCHELL. I do not want to take up all the time.

Congressman Hatcher.

Mr. **Hatcher**. No questions.

Mr. **Mitchell**. No questions.

Thank you very much. We really appreciate your being here this morning. This is one of the few committees and subcommittees in the Congress that starts at 8:30. That is the only way we can get our work done.

Mr. **Royer**. It is 5:30 my time, Mr. Chairman.

Mr. **Mitchell**. 5:30. Don't give me any ideas.

Mr. **Royer**. May I say one other thing?

The National League of Cities has put together over these past 2 years a code of conduct for franchising which I would hope has been submitted to the subcommittee, and if not we certainly will submit it for the subcommittee's record. But it is a document which has gone through our policy process in the league, it is being used by many cities and it addresses some of those local ownership questions that you were raising, and I think it does make the case that the cities are trying to be responsible and reasonable with their local regulatory powers.

Mr. **Mitchell**. Thank you very much. I am advised that the copies have been made available to all the members of the subcommittee. We might ask for more so that we can cover the entire full committee.

[Material referred to follows:]

National League of Cities

1301 Pennsylvania Avenue NW
Washington, D.C.
20004
(202) 626-3000
Cable: NLCITIES

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REGULATING CABLE TELEVISION

REPORT OF

THE NATIONAL LEAGUE OF CITIES

September 1981

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SUMMARY

Cable television is rapidly evolving into a high capacity communications system offering a wide variety of video and non-video services. The regulation of cable poses significant policy and legal questions for Congress, the courts, state legislatures, and local governments. The most significant question is the proper treatment of cable under the First Amendment.

Cable should be treated as a unique communications medium for regulatory and First Amendment purposes. The central First Amendment issue in cable regulation is the conflict of interest between users and operators of cable systems. Resolution of this question will determine whether subscribers have the right to receive information and services from a wide range of service providers and whether these providers have the right to offer competitive services over the cable system. Practical public policy concerns, including cable's monopoly position in each community, concentration of ownership problems, access rights for programmers and service providers other than the operator, and cable's use of the public rights-of-way, establish the framework for defining cable's First Amendment status.

Cable's *de facto* monopoly position in each community results in each cable operator having monopoly control over the conduit into the homes and businesses served by the operator's system. Competition between two cable systems in the same geographic area is nonexistent. Although consumers and businesses may obtain some of the system's services from other sources, none of these alternative communications service providers can offer the variety of

communication services provided by cable. Consequently, local governments protect their citizens by including provisions in the franchise agreement with the cable operator allowing the local government to set or regulate rates for basic cable services, to insure access, and to set minimum service standards.

In recent years, ownership of cable systems and programming production has become more concentrated. This growth in concentration of media control may prevent cable from reaching its potential of making widely available a diversity of communications and information from different sources.

Local governments have primary responsibility for insuring access to the system for programmers and service providers other than the system operator. Access is insured by the local government not through broadcast-type content regulation of cable, but rather through the set-aside of channels for public, educational, governmental, and leased access. The set-aside of channels is the result of a voluntary agreement between the local government and the operator and is incorporated into the franchise agreement.

A cable operator cannot provide cable services in a community unless the local government grants the operator the right to use a limited public resource, the public right-of-way. The limited availability of space for pole attachments and underground ducts effectively precludes the existence of more than one cable system in many communities. The local government is obligated to insure service most nearly equivalent to that which would have been provided absent any physical limit on competition by imposing conditions on the permit or license to use the public right-of-way.

The National Cable Television Association (NCTA) asserts that cable should be treated like a newspaper, rather than a broadcaster, under the First Amendment and that the cable operator should have complete discretion to decide who uses the system's channels and the right to revise and edit all programming and services.

NCTA argues that an exclusive monopoly to provide cable services in a community does not give the cable operator monopoly control of entertainment and information services. Over-the-air television, radio, live sports, movies, and video cassettes are competitors in the entertainment area, and newspaper and telephone companies are information service competitors. This argument ignores the fact that cable can provide all of these competitive services as well, through a single conduit into each home and business at significant cost savings.

NCTA states that Congress, the courts, and state legislatures should treat cable companies as private entities with the First Amendment rights of newspapers. It suggests that access and programming requirements should not have a place in franchise negotiations or agreements. The access requirements of a franchise agreement are nothing more than an agreement to limit the cable operator's First Amendment rights and are an invalid waiver of constitutional rights.

NCTA's sweeping constitutional generalities--such as labeling cable as an electronic newspaper--oversimplify cable's problems and ignore the First Amendment rights of others.

The multiple functions of cable make it a unique communications medium and determine how the First Amendment should effect its regulation. In none of cable's three functional categories does the cable operator resemble a newspaper publisher. The operator has no control of the content of services and programming on the access channels that permit limited common carrier-type services. It has selection control only, not content control of services or programming control on the channels that the operator has the right to allocate to other users. It has exclusive broadcast-type content control of programming and services only on the channels for which the operator produces the programming or services.

Local government, as the selector of the single operator providing cable services in a given geographic area, has the responsibility to provide access to the system for persons other than the operator without infringing on the First Amendment rights of the operator. The set-aside of a small number of channels for access purposes accomplishes this goal without affecting the operator's right to select or produce programming and services on all the other channels.

Until the local government grants the cable operator a franchise, that operator cannot provide cable service in that community. In exchange for this franchise, the cable operator may voluntarily agree to allocate some channels for access so that the First Amendment rights of others will be enhanced and the public interest is protected. A regulated system of reasonable access which allows for the expression of multiple views and the provision of competing services could eliminate the need for broadcast-type regulation of cable.

REGULATING CABLE TELEVISION

The evolution of cable television from a community antenna television (CATV) system carrying only broadcast signals to a high capacity communications system carrying a wide variety of television and nonvideo services raises significant policy and legal questions about the role of government regulation of cable. The Federal Communications Commission's (FCC) increasing deregulation of cable and the lack of a federal law specifically addressing cable regulation underscore the need for a clear definition of the appropriate regulatory role for government. To determine the appropriate regulatory scheme for cable, its proper treatment under the First Amendment of the Constitution must be resolved.

The National Cable Television Association (NCTA) asserts in a report to Senator Packwood[1/] that cable is equivalent to an electronic newspaper. The NCTA argues that a cable operator should be considered a newspaper publisher under the First Amendment and as such entitled to First Amendment protections, such as total editorial discretion, accorded a newspaper publisher. This article disputes this position and argues that, due in part to cable's monopoly position, it is more analogous to the broadcast medium than it is to the press. Cable, however, in the final analysis is a unique communications medium and should be treated as such for regulatory and First Amendment purposes.

[1/] National Cable Television Association, Cable Television, Government Regulation, and the First Amendment (April, 1981) (unpublished report to Senator Packwood)[hereinafter cited as NCTA Report].

I. BACKGROUND

A. The Evolving Nature of Cable

Cable television originated in mountainous or sparsely populated areas where over-the-air television reception was poor or very limited. These older systems usually carried up to 12 channels of over-the-air television broadcast signals received by well placed antennas (often located on a nearby mountain) and by microwave relay. In recent years cable has attracted significant attention in the larger cities in which high quality television signals are readily available over-the-air.

This growth in interest in cable is the result of rapid technological developments in the cable industry.[2/] In the mid-seventies the launching of domestic communications satellites (and the FCC's authorizing their use for delivery of distant television signals) made distributing a television signal nationwide economically viable.[3/] Satellites distribute nationally the

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[2/] See Network Inquiry Special Staff, Federal Communications Commission, Preliminary Report on Prospects for Additional Networks, Appendix: Recent Trends in Cable Television (January 1980) [hereinafter cited as FCC Additional Networks Report, Cable Appendix]. See also N. Hickey, The Great Land Rush is On, TV Guide, July 11, 1981, at 2.

[3/] A satellite normally offers the technical capacity to transmit a series of television signals simultaneously to every point in the continental United States equipped with a receive-only earth station. The number of signals is determined by the number of transponders on the satellite. To receive the signals, the earth stations must be tuned to that satellite transponders' transmission frequency and must also be pointed at that satellite. Ordinarily, a single earth station antenna cannot receive the signals from more than one satellite at a time.

In Southern Satellite Systems, 62 F.C.C. 2d 153 (1976), the FCC granted initial authorization to a common carrier to use satellite rather than terrestrial microwave facilities to deliver a distant television station signal to cable systems. In American Broadcasting Cos., 62 F.C.C. 2d 901 (1976), the FCC authorized installation of 4.5 meter receive-only satellite earth stations.

signals of a few independent broadcast stations (known as superstations) and other alternative television programming not available over the air to cable systems from existing nearby broadcast stations. Initially, this alternative programming was primarily movies. Now satellites deliver a wide variety of entertainment services created especially for a cable audience.[4]

During this same period, the transmission capacity of cable systems has significantly expanded. Most state of the art cable systems can carry 52, and some even 100 or more, simultaneous television channels or other electronic information equivalent. This added transmission capacity permits a cable system to carry multiple distant broadcast signals,[5] the new entertainment programming available on satellites, and a wide variety of additional, nonentertainment communications services.[6]

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[4] At least thirty-three channels of television programming are currently available through satellite to cable systems. Satellites are not technically limited to entertainment programming. They can deliver any type of electronically formatted information.

[5] The FCC has eliminated its restrictions on using distant broadcast signals.

[6] State of the art cable systems can, and many do, offer other services in addition to broadcast and entertainment programming. Some examples of additional services now available are:

- Television channels for public and government use;
- Cable operator originated programming of local interest (origination cablecasting);
- Channels for educational institution use (educational access);
- Closed circuit channels which interconnect local public institutions;
- Specialty information channels devoted solely to financial, consumer price, or weather information;
- All news channels;
- FM radio channels;
- Children's, cultural, Spanish language, video music, or other channels devoted to special appeal audiences.

Cable technology will continue to evolve and offer even greater service flexibility and transmission capacity. Within this decade, optical fiber cable[7] will begin to replace traditional coaxial copper cable. Fiber optic systems will have the capacity to carry hundreds of television (or equivalent) channels. This decade also should see development of meaningful two-way interactive services.[8] By 1990 a predicted 28 million homes will be wired for two-way service.[9] Cable technology will offer the possibility of whole new classes of potential services.[10/] Which of these new services are actually offered over cable will depend on the marketplace.[11/]

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[7] Optical fiber cables contain one or more optical fibers through which laser light, modulated to carry information, is transmitted.

[8] An interactive cable service involves transmitting information electronically in one direction followed by a response in the opposite direction. For example, meter reading may develop as an economically viable interactive cable service. The cable operator would transmit a signal to a device attached to a subscriber's meter asking for a reading. The device would then transmit the current reading in response.

Cable service development has concentrated to date on mass audience, one-way services. The typical cable system operates like a series of television stations. The operator picks entertainment programming packages which will appeal to the widest number of potential cable system subscribers. Few cable operators offer services which elicit any subscriber response other than paying their bill. The cable industry is beginning to experiment with mass appeal services that elicit a consumer response. Advertising is one example, since cable has generally been free of commercials except for retransmitted broadcast signals. Pay-per-view equipment and nonentertainment services such as electronic check writing and shop-by-cable are other examples of more direct audience involvement.

[9] _See_ Cablevision, June 1, 1981, at 158.

B. Structure of Current Regulation

As interstate communications, cable is regulated by the FCC under the Communications Act of 1934.[12/] The FCC regulates cable

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[10/] A few of the technical possibilities are:
- Security monitoring (burglar, fire and police alarms),
- Remote computer terminals providing access to a vast array of computer programs and data bases,
- Medical monitoring,
- Meter reading,
- Energy management,
- Transactional services, e.g., home shopping and banking,
- Polling,
- Street and highway traffic management,
- Accessing selected libraries of films or video tapes,
- Text retrieval, e.g., teletext and videotext,
- Electronic mail delivery.

[11/] Some cable services, although technically feasible, may not enjoy wide consumer demand. Electronic mail, for example, may remain too costly to compete with delivered mail.

[12/] 47 U.S.C. §§151-609 (1976 & Supp. 1981). The FCC has authority to regulate cable systems whenever they transmit broadcast signals or other signals across state lines (e.g., by satellite). The Act does not address the FCC's power to regulate cable (except in regard to political candidate access) but the courts have ruled that the FCC has such power. See U.S. v. Southwestern Cable, 392 U.S. 157 (1968).

directly and recommends guidelines for local regulation. The FCC has not preempted most state and local regulation.[13/]

Some states regulate cable directly but most rely on local government to perform all nonfederal regulation. Typically a local government enacts a franchise ordinance[14/] establishing the basic framework for the community's regulation and addressing

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[13/] FCC rules for cable include:

- Television broadcast signals that a cable system must carry, 47 C.F.R. §76.51-.63 (1980);
- Maximum franchise fees local governments may charge, 47 C.F.R. §76.31 (1980);
- Nonduplication of certain television signals, 47 C.F.R. §76.92 (1980);
- Cablecasting rules (equal access, Fairness Doctrine, personal attack, lotteries, obscenity), 47 C.F.R. §76.205-215 (1980);
- Equal employment opportunity rules, 47 C.F.R. §76.311 (1980);
- Crossownership proscriptions on certain television broadcast and telephone company interests, 47 C.F.R. §§63.55, 76.501 (1980);
- Technical operation standards for cable systems, 47 C.F.R. §76.601-.617 (1980);
- Sports blackout rules, 47 C.F.R. §76.67 (1980).

The FCC also recommends some local franchising procedures and provisions. These include a maximum 15-year franchise period, prompt construction, consumer protection provisions, and a public franchising process affording due process. 47 C.F.R. §76.31, note (1980).

[14/] In a few communities the cable system is actually owned and operated by the local government or its instrumentality. As of June 2, 1980, FCC records indicated that 22 cable systems were municipally-owned. Cable Television Bureau, Federal Communications Commission, Report on Municipally-owned Cable Television Systems (June, 1980). According to a more recent article, there are 28 municipally-owned cable operations. MacKenna, The Cabling of America: What about Municipal Ownership? 70 Nat'l. Civic Rev. 307, 310 (1981). San Bruno, California is the largest municipality operating a cable system. MacKenna advises municipalities to consider cable ownership as a source of revenue. He suggests, however, that small municipalities may be more successful cable system owners than large cities. *Id*. at 330.

local aspects of cable operation.[15] Local, state, and federal regulation of cable can be expected to change along with changes in cable technology.

II. REGULATING CABLE: THE PUBLIC POLICIES

A. Overview

Government has two primary objectives in regulating cable: to protect and enhance the public interest and to facilitate the rapid development of an increasing variety of valuable public communication services. Developing an appropriate regulatory framework to meet these objectives depends to a large degree on the status of cable under the First Amendment. Cable's First Amendment status cannot be defined until legislatures and courts develop answers to complex policy questions. What are the First Amendment rights of cable operators, subscribers, and the public? What First Amendment values can regulating cable enhance positively or frustrate inappropriately?

Two guiding principles underlie First Amendment standards. First, the First Amendment protects the right of people to know and requires a free press to provide people with a robust and wide ranging debate on public issues. The Constitution does not require a free press for the economic or psychological gratification of publishers and editors. For example, it permits limited regulation of business and commercial speech in newspapers and of the content of broadcast services. Under the Constitution the rights of the reader, listener, and viewer are paramount and the print and broadcast media must act in ways not always consistent with the media's economic interest -- when those interests conflict with the audience's interests.

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[15] Franchise ordinances vary from community to community but most include:

- Use of public right-of-way,
- Maximum subscriber rates,
- Franchise fees (normally 3 to 5 per cent of the cable system's gross revenue),
- Service areas,
- Minimum number of channels,
- Minimum signal carriage requirements,
- Access channel requirements.

Second, the First Amendment affects each communication medium in a unique way. The Supreme Court has developed distinct First Amendment standards for each communication medium that take into account the unique characteristics of each medium. It has yet to do so for cable.

The central First Amendment issue in cable regulation is the conflict of interest between users and operators of cable systems. Do all citizens have the right to have access to and to use the information which may be available in a community only over a cable system's facilities? Does a cable operator have an absolute right to select, control, restrict, and modify the content of the information distributed over the cable system? At issue are not only the rights of cable system consumers, but also the rights of national and local advertisers, home security firms, banks, and other service providers who seek access to cable transmission facilities on a nondiscriminatory basis. If the cable operator has absolute control over access to the system, competing users may be excluded from the system by the operator's subsidizing his own services, offering preferential rates to certain customers, or monitoring confidential personal and business information. Resolving the conflict between users and operators will determine whether competing service providers have the right to offer services over the cable system that compete with the operator's own service offering and whether subscribers have the right to receive information and services from a wide range of service providers.

The conflict between the operator's control and the rights of others to use the system arises from the nature of cable and the varied relationships of the operator to the information transmitted. In its most elemental sense, a cable system is a "pipeline" distribution system. The cable pipeline, unlike its natural gas cousin, for instance, does not distribute a uniform product. Rather, it is a conduit for distributing a multiplicity of video and nonvideo, one-way and two-way services. Each category of cable service differs both in characteristics and in its economic relationship to the cable operator.

Today cable operators decide what information is transmitted over cable systems, which programmers and service providers may use the system, and what uses of the system may occur without the operator's consent. Only federal, state, and local regulations limit the operator's absolute control and insure rights of access to the system for users other than the operator.[16]

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[16] *See* notes 12-15 *supra*.

B. Public Policy Issues

Several major public policy issues establish the framework for assessing cable's First Amendment status. These include cable's monopoly position in each community, concentration of ownership problems, access rights for programmers and service providers other than the operator, content regulation, and cable's use of the public right-of-way.

An examination of these issues is necessary because First Amendment standards and obligations are not applied in a vacuum, but rather exist in the context of practical considerations.[17/] The limits on an individual's First Amendment rights are generally those necessary to protect the rights of other individuals or important public concerns.[18/] For example, a person's free speech right does not entitle that person to publish obscene material or make libelous statements.[19/] Each of the public policy issues most relevant to cable is explained briefly in turn.

1. Cable's Monopoly Position

Although a cable operation rarely holds a de jure exclusive franchise, competition between two systems in the same area is

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[17/] See Kovacs v. Cooper, 336 U.S. 77, 85-88 (1949).

[18/] See Erznoznik v. City of Jacksonville, 422 U.S. 205, 209 (1975); Brandenburg v. Ohio, 395 U.S. 444, 447 (1969).

[19/] Gertz v. Robert Welch, Inc., 418 U.S. 323, 347 (1974); Miller v. California, 413 U.S. 15 (1973).

virtually nonexistent. In only about eight of more than 6,000 cable systems in the United States does one operator compete with another operator for the same subscribers.[20] Once a system is built, a second operator normally will not build a separate system to serve the same subscribers because of the economics of cable. Typically, forty to fifty-five percent of the homes passed by a cable system subscribe. Since this is only about ten percent more than the penetration rate usually considered the breakeven point for operating a system profitably,[21] two systems can rarely survive in the same geographic area. Furthermore, financing a second system will be difficult because the operator of the existing system may be well enough established to reduce his rates, forcing the second operator either to charge rates that are below his costs or to go out of business. The initial construction costs of a cable system are high, requiring heavy capital investment and financing costs.

The cable operator's monopoly is based on his control over the conduit into each home and business. Not only is cable a conduit for transmitting multiple services into homes and businesses but the two-way services offered by new technology will make it a conduit for transmitting communications from homes and businesses as well. Although a consumer may obtain many of the cable services from other sources, no other technology offers the bundle of communications services provided by cable.[22] The cable system usually carries or duplicates every other television service available in the community at the time the cable system was built. Unless the cable operator consents, however, new over-the-air television services such as low power television and subscription television will not be transmitted on the cable system.[23] Like the local telephone company, the local cable operator controls bottleneck facilities into the home or business.

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[20] *See* Testimony of Mr. Carl Pilnick, cited in appellant's brief to the Tenth Circuit at 8 in Community Communications Co., Inc. v. City of Boulder, No. 80-1882 (10th Cir. December 24, 1980). *Cf. Mini Cable Systems in Dallas: Small Fish in a Big Pond*, Cablevision, August 3, 1981 at 23. *See also New York May Experiment with Overbuilding in Boroughs*, Cablevision, July 20, 1981, at 12; Dawson, *How Safe is Cable's "Natural Monopoly"?*, Cablevision, June 1, 1981, at 333, 340; FCC Additional Networks Report, Cable Appendix, note 2 *supra* at 11.

[21] *See* Cable Economic Inquiry, 79 F.C.C. 2d 663, 686 (1980)(discussion of system breakeven penetration rates and demand for basic cable television service).

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[22] Video programming received through other media, e.g., free broadcast television, subscription television, multipoint distribution service, and direct broadcast satellites, cannot easily compete with a cable television system for viewers within homes that subscribe to the cable system. A television set, once attached to a cable system, usually cannot be tuned to receive a service that is not carried on the cable system unless a special switch is installed. Moreover, these other media cannot offer the variety and number of channels received through cable. Nor do these other media have a significant potential for two-way user interaction. See Mini Cable Systems in Dallas: Small Fish in a Big Pond, Cablevision, August 3, 1981 at 23:

> While three STV [subscription television] operations and one MDS [multipoint distribution] service are waging a frantic battle for the Dallas TV viewer, their strides are considered to be only temporary. Because of the high rates and limited services STV and MDS offer, Warner [the franchise owner] does not expect these services to hinder substantially the success it will have with the 80-channel system it plans to build and is scheduled to launch in four years.

The local telephone system can provide some two-way services, but it is not likely to match the cost effective potential of cable for two-way transmission of data between thousands of outlying terminals and a central point.

Local governments typically protect their citizens from cable's monopoly power by regulating rates for basic subscriber services, insuring access for users on a nondiscriminatory basis, and setting minimum service standards.

2. Concentration of Control

The First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public . . . ."[24] Congress and the FCC have implemented this constitutional principle by encouraging competition and preventing concentration of control in the media. For example, the Newspaper Preservation Act of 1970[25] facilitates continued editorial competition between newspapers even though one of the newspapers in a community is facing economic failure. The FCC will not grant an entity more than one license for television broadcast service in a market, limits an entity to seven television licenses nationwide, and limits the crossownership of a television or radio station and a daily newspaper in the same community.[26] The FCC also proscribes crossownership between a cable operator and a broadcast television station (or national network) or telephone company in the same community.[27]

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[23] The FCC does not require cable systems to carry subscription television stations. 47 C.F.R. 76.64 (1980). The FCC's proposed rules for low power television would not apply cable "must carry" rules to that service. Low Power Television Broadcasting, 82 F.C.C. 2d 47, 60 n.31 (1980).

[24] Associated Press v. U.S., 326 U.S. 1, 20 (1945).

[25] 15 U.S.C. §§1801-04 (1976). Under that Act, if the Attorney General consents, then a failing newspaper may enter into a joint operating arrangement with a competitive paper in the same community without incurring antitrust liability. See Barnette, "Some Failing Newspapers Find Uncle Sam a Pal," Washington Post, July 24, 1981, at A11, Col. 1.

Cable has the potential to make widely available a diversity of communications. The emerging ownership structure of the cable industry, however, may prevent realization of that potential. Many of the same factors that led to the present federal policy of limiting ownership concentration in other media are evident in the ownership structure of cable. Each cable operator, subject only to his particular franchise requirements, has control over who uses the system's channels and what services and programming are provided over the system.[28] This potential control of a wide range of electronic communications in a community contrasts with a broadcaster's limited control of one electronic voice. The broadcaster controls only the single frequency channel assigned under an FCC license. As cable subscribers increase and the number of homes and businesses with alternative electronic communications access decreases, the ownership concentration issues will assume even greater significance.

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[26] 47 C.F.R. §§73.35, .240, .636 (1980).

[27] 47 C.F.R. §§63.55, 76.501 (1980). The FCC occasionally waives the telephone-cable crossownership prohibition in rural areas. See CATV Crossownership Rules, 84 F.C.C. 2d 335 (1980).

[28] The cable operator will not always choose to control the information on every channel but will presumably select the signal or user for each channel.

Another ownership concentration problem is caused by the growing acquisition of cable systems by large multiple system operators. In 1970, the largest 25 cable system operators served only 46.7 percent of all cable system subscribers in the United States.[29] By 1980 the figure was 68 percent.[30] Federal law does not place any limit on multiple system ownership.[31] This concentration problem is exacerbated by the increase in vertical integration of the multiple system operators, as they develop extensive program production capacity.[32] This vertical integration gives them additional power over the content of programs, the prices paid by cable operators for the programs,[33] and access of competing programmers to their systems.[34]

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[29] Cable Television Information Center, Cable Data (1972), at 7.

[30] Calculated from statistics in Television Digest, Cable and Station Coverage Atlas (1980-81), at 4a, 12a.

[31] *See, e.g.*, Cablecom General, Inc., No. 81-265 (F.C.C. June 11, 1981) (Commissioner Washburn, concurring); and Teleprompter Corp., No. 81-351 (F.C.C. August 11, 1981).

[32] In 1979, four pay cable programmer/packagers accounting for approximately 85 per cent of the pay cable subscribers in the U.S. were owned by or affiliated with cable operators, which cable systems served approximately 20 per cent of the cable subscribers in the nation. No system owned by a pay programmer had an affiliation with any programmer other than its corporate relative. FCC Additional Networks Report, Cable Appendix, note 2 *supra* at 35-36. *See also* note 35 *infra*.

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[33] Unlike an independent program producer, a cable related producer is assured of a market for its programming in affiliated cable systems. Thus, a cable related producer has greater flexibility in pricing its products for use by nonaffiliated cable systems.

[34] FCC Commissioner James R. Fogarty recently expressed concern over the trend toward vertical integration in cable systems. FCC News, July 31, 1981, at 1 (separate statement of Commissioner Fogarty on FCC approval of transfer of control of Teleprompter Corporation to Westinghouse Broadcasting Company). Teleprompter Corp., No. 81-351 (F.C.C. Aug. 11, 1981). He said that vertical integration of cable systems held the potential for anticompetitive conduct if vertically integrated cable operators did not provide full and open access to their systems. For example:

> [A] vertically integrated cable operator may refuse to distribute programming from other companies in order to preclude competition with services offered by its own affiliated program supplier. For example, HBO might be dropped to promote Showtime, or CNN might be dropped to promote a new Group W news service, thereby eliminating competition at the local level. If this should in fact occur, the subscribers to these cable systems would be denied a measure of program choice and program supplier would be denied the ability to compete directly for the patronage of those subscribers.

The Commissioner conceded that vertical integration is a fact of life in the cable system. Nevertheless, he noted that a 1974 Cabinet Committee on Cable Communications had concluded that a policy preventing system operators from owning the programs they distribute would best serve the public interest.

Finally, cross-media concentration in cable is a growing problem.[35] Aside from the FCC proscription of cable-broadcast television ownership in the same market, cross-media ownership is not limited.

The monopoly position of the cable operator in the geographic area served by the system, his control over a single distribution system with multichannel capacity, and the growth in horizontal and vertical integration and in cross-media ownership raise significant public policy questions. It is a risky proposition to rely on potential competition to deter abuses by national conglomerates in the cable industry. During a similar period of governmental neglect between 1907 and 1921, Theodore Vail assimilated a number of monopolistic local telecommunications companies into the largest, most monopolistic corporation in the United States today, American Telephone & Telegraph Company.[36] Thoughtful analysis of the appropriate relationship between evolving communications media and the government is a prerequisite today for developing policy on concentration of control.

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[35] In 1979 some 78.6 per cent of all cable systems were owned by corporations with other media interests. This figure represents a 3.1 per cent increase in such cross-media ownership over 1978. The following cross-media ownership patterns were reported in 1979: broadcasters - 32.8 per cent; program producers and distributors - 17.6 per cent; newspapers - 13.1 per cent; book or magazine publishers - 11.1 per cent; and theatre - 4.0 per cent. Television Digest, Cable and Station Coverage Atlas (1980-81), at 12a. See also, J. Baker, Broadcast Groups Turning Collision Course with Cable Into High Road to Profitability, Cablevision, March 23, 1981, at 40-47.

[36] See J. Brooks, Telephone (1976).

3. Access Rights

Although cable's monopoly position resembles that of other local monopoly utility services, the product disseminated by cable differs significantly from these other services. This difference is important to an analysis of access rights to cable. Cable offers a wide variety of communications services, not a homogeneous consumable such as natural gas or electricity nor a switched audio transmission path between nearly any two points like the telephone system. To maintain distribution of a wide range of communications services on a competitive basis with minimal entry barriers to new service providers, access to the cable system needs to be insured.

A cable operator, free of regulatory constraints, is likely to maximize profits by using his monopoly and monopsony powers. On the basis of his monopoly position, a cable operator can set the prices charged to subscribers for services largely free of all market constraints and limited only by the consumers' elasticity of demand. The operator's monopsony position likewise enables him to control the prices charged to users for access to the cable system. By using the pricing mechanism in a discriminatory fashion to exclude competitive services from the system, the operator has the power to determine which service providers and programmers can have access to the cable system.

A logical limit on the operator's power is to require the operator to allow reasonable access to the pipeline for others to distribute competing services, whether entertainment or public affairs programming, data distribution or two-way interactive services. Government currently imposes two general access requirements on cable systems to insure access for some competitive services. The FCC requires that cable systems must carry the unaltered signals of local television broadcast stations,[37] and many franchise agreements require cable operators to provide channels for community, educational, governmental, and commercial leased access on a nondiscriminatory basis.[38] These access requirements are predicated on the assumption that persons other than the cable operator should have some rights to use the cable system.

4. Content Regulation

The content of cablecast programming is affected by federal recognition of the need for programming that serves the interests of the community. The FCC imposes content regulation on cablecast programming similar to that applied to broadcasters. This regulation includes the Fairness Doctrine, personal attack, and election candidate equal time rules.[39] If local governments have the authority to guarantee access to channels for individuals and groups then perhaps no broadcast-type content regulation of cable may be necessary. This concept is discussed extensively below.[40/]

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[37] *See* 47 C.F.R. §76.51-.63 (1980).

[38] The FCC has deleted its minimum access requirements which were struck down as beyond the Commission's authority under the Communications Act in FCC v. Midwest Video Corp., 440 U.S. 689 (1979). Cable TV Access Channel Rules, 83 F.C.C. 2d 197 (1981).

[39] *See* note 51 *infra*. *See also* note 37 *supra* (FCC rules require carrying most local TV signals).

5. Use of the Public Right-of-Way

A cable operator, like the telephone and electric power companies, must string the system's cable on utility poles or use underground cables or ducts. These pole-line or underground facilities are usually located in a public right-of-way or street or traverse private property under public utility easements. The public has a substantial interest in requiring that the construction, maintenance, and use of utility poles and the digging up of city streets or private land under easement rights meet aesthetic, safety, and convenience standards. Local governments typically require a cable operator to get a permit for such public utility-type privileges.[41/]

Even if a cable system were not a natural monopoly, the limited availability of space for pole attachments and underground ducts in many communities would preclude the existence of

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[40/] See notes 90-147 and accompanying text infra.

[41/] Private individuals have no inherent right to conduct private business along public rights-of-way. The right of state or local governments to require permits for encroachment and to assign conditions to such use has been universally upheld. Moreover, such permits are revocable at any time, and no right to use the street for private purposes can be acquired except by prescription from the municipality. 10 McQuillin, Municipal Corporations, §§30.48-.52 (3d Ed. 1981). See Walker v. City of Birmingham, 388 U.S. 307, 315 (1967)("We have consistently recognized the strong interest of state and local governments in regulating the use of their streets and other public places").

more than one cable system without installing new poles or digging trenches for new underground facilities.[42] When several service providers wish to offer services to the public but physical limitations permit only one to offer services, the local government is obligated to impose conditions on the permit that will insure the community receives the services most nearly equivalent to those which would have been offered if there had been no physical limit on competition.[43]

III. THE FIRST AMENDMENT AND CABLE

A. Unique Characteristics of Cable

Although the print media, broadcasting, and telecommunications common carriers provide similarities and analogies for First Amendment purposes, cable -- like any other media -- is unique and must be evaluated on its own characteristics. The Supreme Court has consistently held that each medium of expression presents special First Amendment problems[44] and should be subject to First Amendment standards suited to that medium's problems.[45] Moreover, "differences in the characteristics of new media justify differences in the First Amendment standards applied to them."[46] As Justice Jackson stated in Kovacs v. Cooper:[47]

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[42] Utility poles and underground duct space represent major construction expenses. Existing utility poles frequently have little if any additional space besides electric and telephone cables. For example, the FCC assumes a typical 35 foot utility pole to have 17 feet of usable space which, considering electrical interference placement and safety space requirements for three cables (one telephone, one electric and one CATV), is insufficient to accommodate a fourth cable without substantial rearrangement or replacement. See Pole Attachments, 72 F.C.C. 2d 59, 71 (1979).

[43] See F.Welch, Public Utility Regulation 76-78 (1968), for a discussion of the Convenience and Necessity certification requirements of state and federal law. See generally New York State Commission on Cable Television, Cable Television Franchising Workbook, chs. 4, 5 (1980).

[44] FCC v. Pacifica Foundation, 438 U.S. 726, 748 (1978).

> The moving picture screen, the radio, the newspaper, the handbill, the sound truck and the street corner orator have differing natures, values, abuses and dangers. Each, in my view, is a law unto itself . . . .

In the same case, Justice Frankfurter criticized the use of loose analogies and broad First Amendment theories:

> Some of the arguments made in this case strikingly illustrate how easy it is to fall into the ways of mechanical jurisprudence through the use of oversimplified formulas. It is argued that the Constitution protects freedom of speech: Freedom of speech means the right to communicate, whatever the physical means for so doing; sound trucks are one form of communication; ergo that form is entitled to the same protection as any other means of communication, whether by tongue or pen. Such sterile argumentation treats society as though it consisted of bloodless categories. The various forms of modern so-called 'mass communications' raise issues that were not implied in the means of communication known or contemplated by Franklin and Jefferson and Madison. . . . Movies have created problems not presented by the circulation of books, pamphlets, or newspapers . . . . Broadcasting in turn has produced its brood of complicated problems hardly to be solved by an easy formula about the preferred position of free speech. . . .[48]

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[45] Southeastern Promotions, Ltd., v. Conrad, 420 U.S. 546, 557 (1975).

[46] Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 386 (1969)(footnote omitted).

[47] 336 U.S. 77, 97 (1949)(Jackson, J., concurring).

[48] Id. at 96 (Frankfurter, J., concurring)(citations omitted).

Cable may now be added to Justice Frankfurter's list of media deserving finely tuned First Amendment standards rather than "oversimplified formulas."

B. The Functional Characteristics of Cable

To understand how the First Amendment should affect the regulation of cable television, it is necessary to analyze cable's characteristics, to compare those characteristics with other media, and to review judicial treatment of those characteristics in other media. This section will review cable's functional characteristics.

Cable has some characteristics of each of the traditional media: the print media, broadcasting, and telecommunications common carriers. The cable industry is seeking to have cable characterized as an "electronic newspaper" and as such entitled to all the First Amendment protections, such as total editorial discretion, accorded newspapers. Cable, however, differs dramatically from a newspaper in function as well as in form. Cable does not function like a newspaper overall, and it has few, if any, particular functions similar to those of an electronically formatted newspaper. The dissimilarity of cable and newspaper operations becomes obvious in the following analysis of cable services on a functional basis.[49]

1. Local Television Broadcast and Access Programming

A cable system is a conduit for distributing information. Operating cable's transmission facility does not depend on control of the information distributed. The cable operator retransmits local television broadcast signals under FCC rules without changing the format or content. Similarly, the cable operator does not control the content of local access programming. The operator's role is usually limited to plugging video tapes into playback recorders according to a prearranged schedule. In transmitting local television broadcast signals and access programming, the system operator has no First Amendment rights. The operator's position is similar to that of a common carrier in that the operator has no control over the information transmitted, does not select it, and cannot discriminate among users eligible for access under the mandatory signal carriage and local access requirements. This lack of editorial control means that cable is not an electronic newspaper when retransmitting local television broadcast signals or transmitting access programming.

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[49] For purposes of analysis, NCTA's characterization of a newspaper operation as compared to a cable operation will be used:

> The [cable] operator, like a newspaper editor, must exercise judgment and control, deciding what is shown and what is not, what needs revision and what editorial policies are appropriate.

NCTA Report at 4. NCTA notes that broadcasters have similar discretion. For a discussion on the First Amendment distinctions between newspaper and broadcast operation, *see* text accompanying notes 72-81 *infra*.

2. Origination Cablecasting

The cable operator has discretion to decide which users will have access to the channels that are not used for carriage of local television broadcasting signals and local access programming. On some channels, the operator may have exclusive control over the programming. If he produces origination cablecast[50] programming, he can assemble original news, entertainment, educational or other local programming, including editorials. In this origination cablecasting function the operator behaves like a local broadcaster and must comply with most of the FCC rules imposed on broadcasters. The cablecast programming must comply with the Fairness Doctrine, personal attack, and equal time requirements and is subject to limitations on lotteries, obscenity, and sponsorship identification.[51] The origination cablecaster has the same copyright interests in this programming as broadcasters have in their programs.

The only real difference between origination cablecasting and broadcasting is how the programming is transmitted. The broadcaster uses the limited radio frequency spectrum while the cable operator uses the closed access coaxial cable. Because origination cablecasting is identical to broadcasting in form, economics, and regulatory treatment, it cannot be treated as an electronic newspaper any more than can local television broadcasting.

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[50] Cablecasting is defined by the FCC rules as programming exclusive of broadcast signals. Origination cablecasting is defined as programming subject to the exclusive control of the cable operator. 47 C.F.R. §76.5 (1980).

[51] 47 C.F.R. §§76.205-76.221 (1980).

3. Pay and Distant Signal Television Programming

Another category of service provided by cable systems is the carriage of distant television signals. Satellites currently transmit the signals of three television superstations to cable systems nationally and relay other signals regionally. Cable operators select these signals and retransmit them. Formerly, these distant signals were relayed to the cable headend[52] by a microwave system. Satellite transmission services have opened a new class of nonbroadcast programming developed specifically for cable systems. Some of these programs are provided to cable operators free of charge, and at least one service pays operators to carry its signals.[53] Other programs, known as pay television, are sold to operators on a per cable subscriber basis.

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[52] The cable headend is the cable system facility used to control and insert signals into the distribution cable. It typically includes an antenna for receiving over-the-air signals, microwave or satellite earth station reception facilities or both, and necessary system controls.

[53] Services that are offered free to cable systems include religious broadcasting network signals and some services supported entirely by advertising. ESPN will compensate operators for carrying its signal. See ESPN to Compensate Operators, Cablevision, August 3, 1981 at 14.

If cable systems carry distant over-the-air broadcast signals, then they are subject to compulsory copyright licensing fees. 17 U.S.C. §111 (1976).

The cable system operator exercises no content control over these distant television signals.[54/] The cable operator's role is limited to selecting the signal and assigning it a system channel. Agreements to retransmit the nonbroadcast distant signals typically prohibit the cable operator from deleting or changing any portion of the programming provided.[55/] In contrast, newspaper publishers usually retain editorial control over the content of stories written by wire services, syndicated columnists, and even comic strips. Without editorial control distant signal carriage bears no relationship to the operation of a newspaper, and cannot be classified as an electronic newspaper function.

[54/] FCC rules require under certain circumstances that distant broadcast signals not simultaneously duplicate a local signal. See 47 C.F.R. §§76.92-.161 (1980). Therefore, certain portions of the distant signal may have to be excised by the cable operator. Local spot announcements may also be inserted by the operator. FCC rules treat imported nonbroadcast signals as cablecasting and subject them to the same broadcast type regulation as origination cablecasting under 47 C.F.R. §§76.205-221 (1980). However, the Commission apparently did not anticipate applying such regulations to distant signals at the time it promulgated the rules nor do the rules appear to serve any useful purpose due to the predominately entertainment nature of the programming and the practical lack of control by the local cable operator. See Cable Television Bureau, Federal Communications Commission, Cable Television and the Political Broadcasting Laws: The 1980 Election Experience and Proposals for Change (January, 1981).

[55/] A few cable operators, especially those with very limited channel capacity, try to "cherry pick" or select programs from several nonpremium services. Programmers, especially those supported by advertising, discourage this practice if they cannot prohibit it contractually. See, e.g., ESPN to Compensate Operators, Cablevision August 3, 1981 at 14.

4. Informational Services

Other cable system channels provide textual information, such as time, weather, stock prices, grocery and other consumer price information, and news wire reports. A few advanced cable systems are experimenting with a new textual service which enables subscribers to access a large information library. These new informational channels bear a superficial resemblance to an electronic newspaper because they present text that reads like newspaper stories. Nevertheless, the functions of a cable operator in presenting this information and the functions of a newspaper publisher are not alike.

The publisher of a newspaper has editorial control over the newspaper's contents, aside from stock market reports and other similar information which represent a very small percentage of nonadvertising space in most newspapers. In comparison, the cable operator has almost no editorial control over the content of the information channels. The cable operator merely selects the category of information or service offered. The operator's role is limited to deciding which information source or service will be used. The operator does not control the content of even the new text services which are designed, assembled, edited, and maintained by service companies for direct sale to cable subscribers. The cable operator is merely a passive transmitter of this information.

5. Newspaper Services

If cable systems were to transmit the actual text of a newspaper, then the subscriber would receive an electronic newspaper. But the newspaper editors, not the cable operator would still control the newspaper's content. The operator's role would be limited to deciding which newspaper(s) would have access to the system's subscribers and would not include control of the content of the text of the transmitted newspapers. The cable operator's First Amendment status would be similar to that of a newstand operator: The operator could choose what newspapers to transmit just as a newstand operator can determine what newspapers to sell. Neither has control over the content of those they select.

If the cable operator were to compose and edit his own electronic newspaper, only then would he assume First Amendment status comparable to that of the printed media. Even then, such rights would inure to the cable operator only for the newspaper channel, not the entire cable operation.

6. Summary of Characteristics of Cable Programming & Services

A cable system has the following characteristics:

-- As a physical pipeline, it has characteristics similar to those of a utility such as an electric, gas, or telephone company.

-- Its multichannel capacity means that different channels have different levels of operator content control.

- -- The operator has no control of content on channels used for local television signals and local access programming.
- -- The operator has no control of the content on channels used for distant television signals, although he may select the signals carried.
- -- On informational channels, the operator usually selects the type of information carried but usually does not control the content.
- -- On origination cablecasting channels, the cable operator has exclusive content control similar to that of a broadcaster.[56]
- -- Some cable channels may be used for data transmission between private parties and for various two-way or interactive communications between the cable operator and particular subscribers.
- -- Cable systems do not resemble a newspaper, electronic or otherwise, in any service presently provided.

C. The Cable Operator's First Amendment Status

Cable performs many functions, and the cable operator's control of the content of the communications differs from function to function. Cable's First Amendment status should be different for each of these functions. Therefore, the First Amendment rights of the cable operator, cable program supplier, and cable viewer should be analyzed for each function. An analysis by function avoids overgeneralization and provides the flexibility to address new functions that may develop without having to reevaluate the cable system operation as a whole.

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[56] Unlike a broadcast facility, a cable system uses a closed transmission system and does not have to use the atmospheric radio spectrum.

There are three basic categories of operator control relevant for First Amendment purposes: no control over content, selection control over content, and exclusive control over content. The no control category includes mandatory broadcast signal carriage services and all access or leased channel use (whether television programming, data, or other information). Selection control includes programming and services selected by the operator but over which he exercises no content control once the selection is made. Examples of selection control are distant signals (broadcast and nonbroadcast) and nonvideo information and textual services. The exclusive control category encompasses local origination cablecasting. The cable operator's First Amendment rights vary according to the category of content control.

1. No Control Category

Within the no control category, the cable operator engages in none of the communicative, self-expressive activity which the First Amendment protects.[57/] The operator exercises no

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[57/] Although the Supreme Court has not defined precisely the speech protected by the First Amendment, protected expression generally involves communication of thoughts, ideas, or emotions. See Cohen v. California, 403 U.S. 15, 18 (1971); Roth v. United States, 354 U.S. 476, 482 (1957); Hague v. CIO, 307 U.S. 495, 515 (1939). Moreover, protected speech does not encompass all words or conduct intended to express an idea. United States v. O'Brien, 391 U.S. 367, 376 (1968); Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942).

control or editorial discretion over the information, but merely provides a channel to transmit programming or information created, controlled, and selected by others. The no control category involves no First Amendment rights for the cable operator because he is not speaking in the First Amendment sense.

2. Selection Control Category

Cable operators argue that their selection of a television signal or other information for carriage on their systems is protected by the First Amendment. But the cable operator's selection of a particular signal does not add significantly to the message transmitted.[58] Indeed, the cable operator's purpose in choosing programming (e.g. selecting Home Box Office rather than Showtime) is not to participate in public discussion or to express ideas, activities which the First Amendment is primarily designed to protect.[59] Rather, the operator is merely exercising a business judgment as to which product will sell best.[60]

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[58] See Home Box Office, Inc. v. FCC, 567 F.2d 9, 49 (D.C. Cir. 1977).

[59] See Police Dept. of Chicago v. Mosley, 408 U.S. 92, 95-96 (1972); New York Times Co. v. Sullivan, 376 U.S. 254, 269-70 (1964).

[60] On the surface such a choice appears similar to a broadcaster's decision to affiliate with (and carry the programs of) network A as opposed to network B. However, broadcasters are ultimately responsible for the content of the programming they broadcast, whether network originated or not. See National Broadcasting Co. v. United States, 319 U.S. 190, 204-06 (1943). Broadcasters routinely review network programming in advance and substitute other programming. In contrast, cable operators exercise no such control over the signals they import (except as noted in note 54, 55 supra).

To the extent that this judgment involves speech, that speech is related primarily to the operator's economic interests and therefore receives only limited First Amendment protection.[61]

Even assuming that the cable operator is "speaking" for First Amendment purposes when he selects programs for the system, this speech act does not supersede the First Amendment rights of the cable system subscribers. Many cable franchise agreements specify television signals that the cable system must carry, and FCC rules require the carriage of local television signals.[62] Such requirements generally reflect the community's desire for diverse programming and for continuing existing television services.[63] The operator may contract away his right to select programming, either in a franchise agreement with the local government or in a distribution contract with a program service provider. The local government, in negotiating a franchise, has the right to insure the widest possible selection of available programs on the *de facto* monopoly cable system.[64] If the cable operator is committed to providing specific programming in the franchise agreement, then the contractual rights of the subscribers to receive that programming, as reflected in the negotiated agreement, will prevail over any rights of the cable operator.[65]

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[61] Central Hudson Gas & Electric Corp. v. Public Service Comm'n, ____ U.S. ____, 100 S.Ct. 2343, 2349-50 (1980); Linmark Assoc., Inc. v. Township of Walling Ford, 431 U.S. 85, 97 (1977). If the cable operator voluntarily agrees to limited selection discretion as part of the commercial transaction of obtaining a franchise, the operator's First Amendment arguments are weakened further. *See* notes 134-147 and accompanying text *infra*.

[62] *See* note 37 *supra* (must carry rules).

[63] "Must carry" rules were developed to insure that cable would increase the broadcast service available to a community by supplementing rather than replacing existing signals. Second Report and Order in Docket 14895, 2 F.C.C. 2d 725, 736 (1966).

[64] Local governments often ask for specific signals or categories of signals in their Request for Proposals. *See e.g.* New York State Commission on Cable Television, Cable Television Franchising Workbook 70 (1980).

The First Amendment comes into play in this selection control category only in limited instances and primarily protects the rights of the viewers, not the rights of the cable operator *per se*.[66] The appropriate comparison is not a newspaper publisher, but a broadcaster whose license is conditioned on serving the public interest.[67] Addressing the First Amendment rights of broadcasters in relation to those of the public, the Supreme Court recently stated in *Columbia Broadcasting System, Inc. v. FCC*:[68]

> Although the broadcasting industry is entitled under the First Amendment to exercise 'the widest journalistic freedom consistent with its public [duties],' . . . the Court has made clear that: *'It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount*. It is

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[65] *See* text accompanying notes 134-147 *infra* (discussion of the effect of negotiating the franchise agreement on the cable operator's First Amendment rights).

[66] *See* text accompanying note 68 *infra*.

[67] *See* 47 U.S.C. §§151-609 (1976) (Communications Act of 1934). The FCC is empowered to issue regulations and grant licenses based on public interest, convenience, and necessity. *Id*. §§303, 309 (1980). Similarly, a municipality authorizes a private entity (e.g. a cable system or a utility) to use public rights-of-way to promote the general public interest and provide service to the public.

[68] _____ U.S. ____, 101 S.Ct. 2813, 2829 (1981)(emphasis in original)(citations omitted).

> the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market . . . . It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here.'

In the cable context, the U.S. Court of Appeals for the District of Columbia in Home Box Office v. FCC [69], quoted Professor Meiklejohn: "'[T]he point of ultimate interest is not the words of the speakers, but the minds of the hearers'" and, quoting Red Lion Broadcasting Co. v. FCC,[70] noted that "'the right of free speech . . . does not embrace a right to snuff out the free speech of others.'"

If cable operators do have a right under the First Amendment to select programs, this right cannot supersede the First Amendment rights of the viewers or supersede government action on behalf of those viewers to protect and enhance their rights.

3. Exclusive Control Category

When a cable operator originates cablecast programming, he controls the content of programming transmitted on that particular channel. This function raises more complex First Amendment questions. The two relevant First Amendment models are broadcasting and the print media. An analysis of these models and a comparison of them to cable follows. At issue is what the government can require from certain classes of speakers. The government's power to require speech, rather than to proscribe it,[71] is implicit in rules imposed by the FCC such as the Fairness Doctrine, personal attack, and equal time.

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[69] 567 F.2d 9, 46 (D.C. Cir. 1977).

[70] 395 U.S. 367, 387 (1969).

a. Comparing the Newspaper Model and the Broadcast Model

The Supreme Court has zealously guarded the print media's First Amendment rights, but has not allowed the media to use its First Amendment rights to restrain other's First Amendment rights.[72] In Associated Press v. U.S.,[73] the Court held that the First Amendment did not exempt the media from antitrust laws. The Court stated that the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public . . . . Freedom to publish means freedom for all and not for some."[74] This suggested that a right of access to established newspapers might exist. In Miami Herald Publishing Co. v. Tornillo,[75] however, the Court ruled that a Florida statute giving a person attacked in a publication a right of reply violated the First Amendment. In Tornillo, the Court reasoned that requiring the additional printing cost, the composing time, and the use of scarce column space would restrain publishing: It stated that publishers should not be compelled "to publish that which '"reason" tells them should not be published.'"[76]

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[71] This analysis does not address government censorship because no such government right has been seriously claimed for broadcasting or newspapers nor is it claimed for cablecasting. 47 U.S.C. §326 (1976) specifically proscribes any FCC censorship or interference with the right of free speech by radio communications.

[72] Associated Press v. U.S., 326 U.S. 1, 19-20 (1945).

[73] Id.

[74] Id. at 20.

[75] 418 U.S. 241 (1974).

The Court has not extended such broad First Amendment rights to broadcasters. The Court has upheld rules that require broadcasters to provide time for the airing of opposing points of view or for responding to personal attack. In Red Lion Broadcasting Co. v. FCC[77] the Court stated:

> There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves.

The Court went on to state:

> [T]he First Amendment confers no right on licensees to prevent others from broadcasting on "their" frequencies and no right to an unconditional monopoly of a scarce resource which the Government has denied others the right to use. [78]

Unfortunately, neither the Red Lion nor the Tornillo opinions analyze and compare their different treatment of the printed media and the broadcast media under the First Amendment. In Red Lion, the Court focused on the First Amendment rights of the listening or viewing audience and the physical limitations of the radio spectrum. The Red Lion Court quoted Associated Press: "Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests."[79]

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[76] Id. at 256.

[77] 395 U.S. 367, 389 (1969).

[78] 395 U.S. at 391.

In Tornillo, the Court was not concerned by the lack of access to a limited medium. This was in spite of strong evidence that concentrated ownership of the press had virtually eliminated competition. Many cities have only one local newspaper but most communities are served by several television and radio stations. Yet the Tornillo Court, unlike the Red Lion Court, did not give any weight to the reader's right to know or the speaker's right to access when press outlets are limited.

To understand the Supreme Court's disparate treatment of First Amendment rights in these cases, the circumstances of each case must be analyzed. In Tornillo, although the opportunity for new newspapers was limited, the limited availability of newspaper outlets was the result of natural economic forces, rather than of governmental restrictions. In broadcasting, however, the limited competition is the result of governmental restrictions on the number of outlets due to radio spectrum limitations. Any person has the right to publish printed material without any significant governmental restriction although competition and other economic factors (e.g., the large initial investment required) may limit the number of economically viable publications in a given area or on a particular subject. Because these limitations are the result of the marketplace rather than governmental action, government intervention to protect the readers' rights cannot be justified. In contrast, the limited number of broadcast outlets is the result of governmentally imposed limits and generally is not the result of marketplace forces.[80/]

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[79] 326 U.S. at 20.

An additional distinction between the printed and broadcast media is that the print media does not use a public resource as a transmission medium. Since broadcasters use a valuable public resource -- the radio spectrum -- they must behave as trustees: "It does not violate the First Amendment to treat licensees given the privilege of using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern."[81/] Another possible reason for the disparate treatment of the two media under the First Amendment is the reverence given to the press in the United States as the basic vehicle for "diverse and antagonistic voices." Twentieth century technologies, such as broadcasting and cable,

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[80/] The Court of Appeals in Home Box Office v. FCC, 567 F.2d 9, 46 (D.C. Cir. 1977) recognized this distinction between Red Lion and Tornillo. The court said "scarcity which is the result solely of economic conditions is apparently insufficient to justify even limited government intrusion into the First Amendment rights of the conventional press, See Miami Herald Publishing Co. v. Tornillo ...."

[81/] 395 U.S. at 394.

offer the courts and Congress an opportunity to reevaluate how to attain the goals of the First Amendment without altering the special status of newspapers under the Constitution.

In summary, the primary reason for treating the two media differently is the degree of government and public involvement in each. In the print media, where the degree of competition and the number of outlets is the result of natural market forces and those outlets can operate without a special governmentally conferred benefit, the Court generally has not allowed regulation of the outlet's content. In broadcasting, where the degree of competition and number of outlets is the direct result of government control and those outlets can only operate by using a public resource, the Court has permitted some limited control of content.

b. The Cable Model.

The Supreme Court has not directly ruled on how the First Amendment applies to cable.[82] The Court has held, however, that cable is engaged in interstate communications by wire or radio and that the FCC has authority to regulate cable as "reasonably ancillary" to its regulation of broadcast television under the Communications Act of 1934.[83] The Commission has imposed restraints upon cable similar to those the Court refused to apply to newspapers in Tornillo. The FCC determines which broadcast signals a cable system must carry and applies virtually the same fairness, equal time, and personal attack regulations to cablecasting as govern broadcasting.[84]

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[82] In FCC v. Midwest Video Corp., 440 U.S. 689, 709 n.19. (1979), the Court did not reach the First Amendment question, but noted that "it is not frivolous."

[83] United States v. Southwestern Cable Co., 92 U.S. 157 (1968).

In addition to the historical links between broadcasting and cable, the Red Lion and Tornillo analyses suggest that cable should be accorded treatment for exclusively controlled programming similar to that of broadcasting under the First Amendment rather than that of newspapers. Unlike newspapers, cable depends on government for its existence. Federal rules and statutes establish specific market opportunities and advantages for cable.[85] At the local level, cable would not exist without a grant of authority to use the public right-of-way. In most cases, as a result of a combination of technological factors, physical availability of pole space, the need to use the public right-of-way, and the economics of the market, only one cable system can exist.[86] Local government has the authority to select the operator of that system on the basis of the community's service needs.

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[84] See note 13 supra for a complete list of the regulations applied by the FCC to cable.

[85] For example, in 1978 Congress added a new section to the Communications Act of 1934, 47 U.S.C. §224, to regulate cable attachments to utility poles in part "to minimize the effect of unjust or unreasonable pole attachment practices on the wider development of cable television service to the public." S.Rep. No. 95-580 1, 14, reprinted in [1978] U.S. Code Cong. & Ad. News 337, 350.

[86] See note 42 and text accompanying notes 20-21 supra.

Government regulation of the cable monopoly is lawful at the federal level under the Communications Act of 1934 and at the state or local level under police powers.[87/] Government may regulate to protect the public interest (e.g. to insure adequate service, reasonable access to the system, or to prevent monopoly profits) or to allocate a limited public resource (i.e., pole and underground space). Cable, like broadcasting and unlike the print media, is subject to legitimate and serious governmental concerns and uses a scarce public resource.[88/] Thus, the conceptual basis for First Amendment standards for origination cablecasting is similar to that for broadcasting. A broadcaster can speak only if the government grants the broadcaster a license to use the radio spectrum. Similarly, a cable operator can speak only if the government grants him a license to use the limited public right-of-way.[89/] For First Amendment purposes, cable should be treated like broadcasting when the cable operator produces programming and exercises exclusive control over content.

[87/] *See* notes 12-15 *supra*.

[88/] In *Columbia Broadcasting System, Inc. v. FCC*, ____ U.S. ____, 101 S.Ct. 2813, 2829 (1981), the Court stated "A licensed broadcaster is 'granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations.'" (Citation omitted.) Such language fits the cirumstances of a cable operator as easily as a broadcaster.

[89/] *See* note 41 *supra*.

IV. THE FIRST AMENDMENT AND ACCESS

Affirmative government action to facilitate expression has emerged in the last 40 years as one of the most significant First Amendment issues.[90] Government action in the form of cable access requirements intrude only minimally into the content of any program. The Supreme Court's statement in Red Lion, reemphasized in Columbia Broadcasting System, Inc. v. FCC, [91] that "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount" is as relevant for cable as it was for broadcasting. This section develops the argument that the right of access to cable systems is essential for cable to achieve its full potential as a medium for free expression. Cable access differs from access to other media and reasonable cable access requirements are consistent with fundamental principles of free expression.

A. Justification for Access

The principle that a multiplicity of outlets permits robust expression[92] argues for a multiplicity of voices free from operator control on the single cable system in a community. In

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[90] L. Tribe, American Constitutional Law 693 (1978); Z. Chafee, Free Speech in the United States 559 (1941).

[91] ____ U.S. ____, 101 S.Ct. 2813, 2829 (1981)(emphasis omitted).

[92] See FCC v. National Citizens Comm. for Broadcasting, 436 U.S. 775, 780 (1978); Associated Press v. U.S., 326 U.S. 1, 20 (1945).

FCC v. WNCN Listeners Guild,[93] the FCC determined that the radio marketplace has enough licensees to provide diverse expression and entertainment without specific government regulation of programming formats. Each radio station in a community is owned, operated, and controlled by a licensee unaffiliated with any other radio station in that community. In contrast, each community with a cable system has only one licensee, who operates the only door to the cable marketplace. Having designated the doorman, the government -- whether federal, state, or local -- must assume responsibility for insuring that the doorman serves the community's interests by opening that door on a nondiscriminatory basis to a variety of speakers. Then the community need not, should not, and cannot significantly control what those speakers say once they enter.[94]

Moreover, the local cable company has ample opportunity to express opinions, present information, and select entertainment. For example, on a 36 channel cable system with six channels reserved for access and 10 "must carry" broadcast station signals, the operator has 480 channel hours per day to program as he sees fit. In Columbia Broadcast System, the Supreme Court held that reasonable statutory broadcast access rights for political candidates do not impair the discretion of broadcasters. Similarly, reasonable access requirements do not impair the discretion of cable operators "to present their views on any issue or to carry any particular type of programming."[95]

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[93] ____ U.S. ____, 101 S.Ct. 1266 (1981). NCTA cites this case to support the proposition that the best guarantee of diversity and freedom of information is to eliminate government regulation in the communications marketplace. NCTA Report at 28.

[94] There are some limited exceptions to the proscription of governmental control of speech. Regulation of obscenity and lotteries are two examples. See Miller v. California, 413 U.S. 15, 23-25 (1973); 18 U.S.C. §1304 (1976).

Cable operators also argue that they need absolute control over all of a cable system's channels for financial reasons.[96] This need has not been established. In fact, the skyrocketing value of cable systems and the fierce competition for franchises, even in cities with extensive access requirements, suggest strongly that total control of all channels is not necessary for financial viability.[97]

Columbia Broadcasting System reaffirms the validity of government regulation that balances the First Amendment rights of various interests. Cable access requirements imposed by a local government as a condition for the grant of a monopoly franchise and structured like the access statute at issue in Columbia Broadcasting System create limited but reasonable rights to access, not a general right of access to any channel at any time.

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[95] Columbia Broadcasting System, Inc. v. FCC, ____ U.S. ____, 101 S.Ct. 2813, 2830 (1981).

[96] NCTA Report at 37. See also note 128 infra.

[97] See text accompanying note 128 infra. Based on the reported results of the cable television industry's operations for 1979, the FCC reported that industry revenues increased more than 20 per cent over 1978 revenues, while pretax net income increased more than 45 per cent in the same period. Cable Television Bureau, FCC, Cable Television Industry Financial Report, December 29, 1980, at 1.

In so doing, these requirements balance the First Amendment rights of the viewers with the economic interests and First Amendment rights of the cable operator.[98]

A cable operator who operates under the authority of a government franchise and who denies access to other speakers within the community may be violating the First Amendment rights of the excluded parties and of system viewers. The multitude of cable services and cable's intrusiveness into the home suggest that treating the cable system like the company town in Marsh v. Alabama[99] may be appropriate. In Marsh, the First and Fourteenth Amendment rights of citizens were violated when the town, owned and operated by a private company, prevented the distribution of religious literature. A cable operator with the capacity to determine which programming, electronic mail, or other services can enter the pipeline into each home and business in a community is not unlike a company which determines what literature may be distributed within the company town. As the Court stated in Marsh:[100]

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[98] Implementing the principle of access can be left to the states and their instrumentalities. Allowing states or local governments to establish access requirements comports with the Tenth Amendment concept of federalism. "The essence of federalism is that states must be free to develop a variety of solutions to problems and not be forced into a common, uniform mold." Addington v. Texas, 441 U.S. 418, 99 S.Ct. 1804, 1812 (1979).

[99] 326 U.S. 501 (1946).

[100] Id. at 506 (citations omitted).

> The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. . . . Since these facilities [bridges, ferries, turnpikes and railroads] are built and operated primarily to benefit the public and since their operation is essentially a public function, it is subject to state regulation.

In a "wired city"[101] the cable operator controls entry in that electronic medium by all citizens. The Court in Marsh reaffirmed that "the preservation of a free society is so far dependent upon the right of each individual citizen to receive such literature as he himself might desire that a municipality could not without jeopardizing that vital individual freedom, prohibit door to door distribution of literature."[102] Access to cable is the video age's equivalent of door-to-door distribution of literature. The local government in authorizing a cable company to service a community has a duty to insure that the cable operator does not impede access to the pipeline entering other's homes and businesses.[103]

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[101] The "wired city" is the futurist's vision of a city where virtually all homes are connected to a cable system which provides all video services, thus freeing the broadcast portion of the radio spectrum for other uses. See Young, The Wired City, New York Magazine, May 25, 1981, at 28.

[102] 326 U.S. at 505.

General communications policies, as well as the First Amendment, justify cable access. Cable can provide competition and diversity in communications services. Cable channels used for the one-way or two-way transmission of data or voice communications will perform a valuable local communications service now largely monopolized by the local telephone company. While a cable system is not likely to be a substitute for the local telephone network, it can perform certain local two-way communications more efficiently than the telephone system, such as communications between a central location and multiple terminals.[104]

If competition and diversity in communications services are desirable, this alternative local communications medium should be available for the widest possible public use. But the cable operator, left to his own discretion, will have little incentive to lease two-way channels to potential competitors on nondiscriminatory terms and conditions. For example, a cable operator with a financial interest in a security service provided over his cable system may be unwilling to lease channel capacity to a local burglar alarm company or may charge a discriminatory rate. A cable system's leased channel service need not be subjected to common carrier-type regulation to achieve equitable results. A reasonable, nondiscriminatory rate and service access requirement applicable to all types of services would insure that the local cable system is used for the benefit of all citizens and is available to growing and diverse communications services.

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[103] The justification for access extends beyond First Amendment considerations to public policies such as those embodied in the antitrust statutes. For example, leased access requirements can prevent a cable operator from monopolizng interactive services such as security systems, banking, or data base access. *See* Channel 100, Toledo, Inc. v. Comcast Cablevision Corp., No. 80-40071 (E.D. Michigan) where a preliminary injunction was issued preventing the cable system from evicting a channel lessee. The Justice Department has also argued that a cable operator, as a lawful monopolist controlling a unique resource, must grant reasonable and nondiscriminatory access. Comments of the U.S. Dept. of Justice, No. 18397 (F.C.C. September 5, 1969). *See also* Barnett, *Cable Television and Media Concentration*, 22 Stan. L. Rev. 221 (1970).

[104] For example, Manhattan Cable Television plans to transmit data between the municipal building and nine New York City municipal computer service centers using its coaxial cable rather than leased telephone lines. *See* Cablevision, July 20, 1981, at 12. Also, local cable channels will be used in connection with a switched digital data network being developed by Tymnet, Inc. and Satellite Business Systems for communications between New York City and San Francisco. *See* FCC applications File No. 8153-ED-PL-80 et al.

B. Lack of Danger in Access Requirements

The National Cable Television Association argues that cable access requirements are dangerous for the media.[105/] It lists a series of dangers which apply, if at all, to newspapers and broadcasting and then fails to show how cable may be subject to these dangers. It is inappropriate to presume that potential dangers associated with print and broadcast access automatically apply to cable system access.[106/] One commentator who has explicitly assessed the potential harms and benefits of cable access

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[105/] NCTA Report at 25.

[106/] *See* Miami Herald v. Tornillo, 418 U.S. 241, 254-57 (1974)(discussing access dangers in a print context).

regulation has concluded that the competing values of minimizing government intervention and insuring equal opportunity for expression can be reconciled through cable access regulation.[107]

A review of NCTA's list of "potential dangers" will clarify the debate. The first danger cited is "deterring those items of coverage that will trigger duties of affording access at the media's expense."[108] This is not relevant to cable access requirements because cable access is not contingent on a trigger event. Access requirements do not vary with cable company use of other channels or with program content on those channels. Cable access, unlike newspaper or broadcast access, does not require cable operators to self-censor or to "conclude that the safe course is to avoid controversy."[109] For example, cable access does not require that a cable company carrying one news service provide channels to all other news services.

The second suggested danger, "inviting manipulation of media by whatever bureaucrats are entrusted to assure access,"[110] is wrong, as well as insulting to local governments. No case of actual abuse or of significant problems associated with access regulations has been identified anywhere in the country. Moreover, most cities have established access plans that are free of any administrative discretion. Such plans provide nondiscriminatory guidelines to qualify for access, insulate supervision of access channels and operations from government influence (except government access channels),[111] and establish separate noncompeting categories for access, e.g. community, educational, leased, government, and two-way. A cable system operator's discretion in providing additional access through its own local origination channels or otherwise is unaffected.

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[107] L. Bollinger, *Freedom of the Press and Public Access: Toward a Theory of Partial Regulation of the Mass Media*, 75 Mich. L. Rev. 1, 38 -39 (1976).

[108] NCTA report at 25 (quoting L. Tribe, American Constitutional Law 697 (1978)).

[109] 418 U.S. at 257. *See* NCTA Report at 17 n.47.

[110] *See* note 108 *supra*.

Government involvement facilitates rational and fair opportunities to communicate through cable. In this respect, the government's role in insuring nondiscriminatory access to the community's cable system resembles its role in adopting reasonable time, place, and manner regulations for other forms of expression.[112] When a citizen uses a public resource for an expressive purpose, the government may insure that he does so in an orderly fashion, with minimal intrusion on the First Amendment rights of other citizens.[113] The benefits from access far outweigh any potential abuse. A government access channel, for example, promotes the important goals of conducting government in the open[114] and of "enhancing the ability of . . . the public to receive information necessary for the effective operation of the democratic process."[115]

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[111] *See* note 118 *infra*.

[112] *See* Buckley v. Valeo, 424 U.S. 1, 18, (1976)("[T]he government may adopt reasonable time, place, and manner regulations, which do not discriminate among speakers or ideas, in order to further an important governmental interest unrelated to the restriction of communication"); Erznoznik v. City of Jacksonville, 422 U.S. 205, 209 (1975).

[113] *Compare* Schneider v. State, 308 U.S. 147 (1939)(anti-handbill ordinance was invalid as applied to labor, religious, and political pamphleteering despite the state's legitimate purpose of minimizing litter, noise and traffic congestion and protecting people from fraud and invasion of privacy) *with* Reynolds v. Tennessee, 414 U.S. 1163 (1974)(The Court refused to review a conviction, under a statute prohibiting disturbance of religious assemblies, for chanting during the President's speech at a religious gathering).

NCTA suggests a third danger, "escalating from access regulation to much more dubious exercises of government control."[116] This allegation is irrelevant to access regulations, which are structural rather than content based.[117] The government does not interfere with program selection and program content on access channels,[118] nor could it constitutionally do so.

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[114] See, e.g., Government in the Sunshine Law, 5 U.S.C. §552b, (1976); Freedom of Information Act, 5 U.S.C. §552 (1976).

[115] Columbia Broadcasting System Inc. v. FCC, 101 S.Ct. 2813, 2830 (1981).

[116] See note 108 supra.

[117] The FCC has sanctioned this concept of structural rather than content based regulation of cable television. It recently reaffirmed its policy of not applying the Fairness Doctrine and equal opportunities for political candidates rules to access programming, "as long as the channels on which such programming is presented themselves have inherent in their functioning, access of a type which makes possible equal opportunities for political candidates and time for the provision of programming covering all sides of controversial issues of public importance." Cable TV Access Rules, 83 F.C.C. 2d 147, 148 (1980).

[118] If an access channel is dedicated to government use, the government may exclude others from using that channel and control the content. This limited direct government use of cable is consistent with the First Amendment, which allows the government to "add its own voice to the many that it must tolerate, provided it does not drown out private communication." L. Tribe, American Constitutional Law 590 (1978).

Significant access opportunities -- community, educational, governmental, and commercially leased -- and increased cable coverage and penetration should decrease the need for federal cablecasting rules such as equal time, fairness, and right of reply. Development of alternative opportunities for electronic expression may even eliminate the need for such rules (or "regulatory impediments" as NCTA characterizes them).[119] Until those alternatives exist, however, "impediments" must be distinguished from access opportunities. NCTA cites practical considerations such as burdensome recordkeeping requirements and intrusive government enforcement as reasons for avoiding content regulation. Access arrangements have none of these problems. If, as NCTA suggests, a cable system with 100 channels has 2400 hours of program transmission time per day,[120] reserving some of these channels for access is a reasonable and minimally burdensome means of protecting citizens' First Amendment rights.[121]

Finally, refusing to entrust government with access regulating powers is dangerous. The Supreme Court in *Red Lion* emphasized these counterdangers in upholding the FCC's Fairness Doctrine. One significant danger is concentrating control over the community's major communications conduit in a single corporation.[122]

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[119] NCTA Report at 31.

[120] NCTA Report at 30.

[121] Access requirements may even benefit the cable company. NCTA notes the valuable marketing role access plays. NCTA Report at 31, n.95. *See* note 127 and accompanying text *infra*.

[122] Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390, 395 (1969); *See also* text accompanying notes 24-36 *supra*.

In conclusion, if Congress and the Supreme Court affirms government's authority to guarantee the availability of adequate access channels on all cable systems, then perhaps content regulations, such as the Fairness Doctrine and equal time, may be eliminated or made less burdensome.

C. Voluntary Contractual Obligations and The First Amendment

Despite the voiding of the FCC's access requirements,[123] most local governments continue to require access channels in the franchise agreement. Although most cable operators voluntarily commit themselves to providing access in these franchise agreements, the NCTA criticizes such access requirements as unconstitutionally conditioning enjoyment of a state granted privilege on relinquishing First Amendment rights.[124] This argument, however, ignores the many cases that uphold state regulation even when it curtails the exercise of constitutional rights.[125]

Local governments typically require access channels in the franchise agreements by stating these and other requirements in a Request for Proposals and including these obligations in the final franchise agreement. As of March, 1981, according to NCTA, more than 1,018 access channels were operating. The cable industry recognizes the utility of free public access channels "as a marketing technique to gain consumer acceptance and expand market penetration."[126] Cable companies continue to bid for franchises, promising substantial commitments to access and frequently offering more access channels than required.[127] Even in Boston, where proposed access requirements are among the most demanding, two cable companies conducted a fierce battle for the franchise.[128]

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[123] FCC v. Midwest Video Corp., 440 U.S. 689 (1979). See note 38 supra.

[124] NCTA Report at 44-45, citing Perry v. Sindermann, 408 U.S. 493 (1972).

[125] See notes 136-147 and accompanying text infra.

Access provisions in a franchise agreement do not violate the First Amendment. The First Amendment prohibits governmentally sanctioned distinctions based on the content of speech.[129] Access provisions in a franchise agreement are content neutral.[130] A local government does not tell the cable operator what messages to carry on the access channels. The cable operator is simply required to make channels available to those who want to convey a message. Cases in which the government abridged individual freedom of expression by imposing sanctions based solely on the content of constitutionally protected speech[131] do not apply to content neutral requirements.[132] Although requiring the operator to reserve some channels for public access may possibly affect his profit potential, that is not sufficient to justify prohibiting municipal regulation of a business activity in which the public has an interest.[133]

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[126] NCTA Report at 31 n.95.

[127] For example, Cox Cable recently agreed to provide $450,000 annually for public access in New Orleans and more when the company increases rates. See New Orleans and Cox Sign Franchise Pact, Multichannel News, July 27, 1981, at 11.

[128] Two-way Fight for Boston, Broadcasting, June 29, 1981, at 57; Competition for Boston Franchise Grows Fierce and Furious, Cablevision, July 6, 1981, at 12.

NCTA, in the same paper in which it notes the marketing value of access and the industry's expanding commitment to access "despite" Midwest Video II, asserts that "any government access scheme for cable risks discouraging the investment necessary to construction of cable systems. The community would thereby lose the new sources of information and entertainment that cable construction makes possible, when cable systems are protected by the First Amendment." (Emphasis added.) NCTA Report at 37. Not only is this statement undocumented, but it is also refuted by the booming development of cable television with access requirements and without the absolute First Amendment prohibitions on regulation for which NCTA argues. See note 97 supra.

[129] Hudgens v. NLRB, 424 U.S. 507, 520 (1976).

[130] See text accompanying notes 108-121 supra.

To the extent that access requirements involve First Amendment rights of the cable operator, the parties to a cable franchise agreement -- freely entered into by each party for mutual benefit -- may limit the operator's First Amendment rights in return for the benefits of the franchise. A fundamental principle of contract law allows competent parties to contract to perform or abstain from a course of conduct and to manage their affairs in their own way unless grounds for judicial interference are very clear.[134] A cable company has no opportunity to exercise any First Amendment rights in a community until it is awarded a cable franchise. The franchise gives the cable company the ability and the right to express itself without government interference. In exchange for this right, the cable operator may voluntarily and constitutionally agree to allocate some channels for access in consideration for the franchise so that the First Amendment rights of others will be enhanced.[135]

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[131] E.g., Elrod v. Burns, 427 U.S. 347 (1976); Speiser v. Randall, 357 U.S. 513 (1958).

[132] FCC v. National Citizens Comm. for Broadcasting, 436 U.S. 773, 799-800 (1978).

[133] See California State Auto Ass'n Inter-Ins. Bureau v. Maloney, 341 U.S. 105, 111 (1951); Home Box Office, Inc. v. FCC, 567 F.2d at 49 n.97. See also Marsh v. Alabama, discussed in text accompanying notes 99-103 supra. Cable operator dedication of some channels solely to nonexpressive purposes such as business data transmission, security monitoring, and banking challenges NCTA's arguments that the cable operator's freedom of expression will be unconstitutionally limited if he is faced with any regulation which intrudes on his content discretion. NCTA's real concern appears to be that access requirements might interfere with a cable operator's ability to allow access only to the most lucrative lease customers.

Agreements which limit the constitutional rights of one or both parties are often valid. For example, a prospective employee of the Central Intelligence Agency must sign a contract which requires that the employee submit any proposed publication for prior review. The Supreme Court sanctioned this provision and noted:

> Moreover, this Court's cases make clear that -- even in the absence of an express agreement -- the CIA could have acted to protect substantial government interests by imposing reasonable restrictions on employee activities that in other contexts might be protected by the First Amendment. [136]

Similarly, a cable operator's agreement to dedicate a portion of the community's cable system for public access is lawful. The franchising authority is simply contracting to protect substantial community and public interests[137] by requiring access channels as one term of the franchise contract.[138] Other cases have upheld agreements waiving various constitutional rights, including certain procedural due process rights,[139] Eleventh Amendment sovereign immunity,[140] the right to be present at a trial,[141] the right to a jury trial,[142] and the right to be free from warrantless searches.[143]

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[134] Steele v. Drummond, 275 U.S. 199, 205-6 (1928); Doctor Miles Medical Co. v. Park and Sons, 220 U.S. 373 (1911); 6A Corbin on Contracts §1376 at n.16.

[135] See Columbia Broadcasting System, Inc. v. FCC, 101 S.Ct. at 2829, quoted in note 88 supra; Illinois Broadcasting Co. v. City of Decatur, 238 N.E. 2d 261 (Ill. App. 1968).

[136] Snepp v. United States, 444 U.S. 507, 509 n.3 (1980).

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[137] See text accompanying notes 18-43 supra.

[138] The cable industry cites Frost v. Railroad Comm'n, 271 U.S. 583 (1926), for the proposition that the State "may not impose conditions [on the grant of a privilege] which will require the relinquishment of constitutional rights." NCTA Report at 45. The validity of Frost in light of the undoubted constitutionality of the Communications Act of 1934, which conditions the grant of a broadcast license on a number of public interest requirements, including access requirements that limit a broadcaster's First Amendment rights, is questionable. See FCC v. National Citizens Comm. for Broadcasting, 436 U.S. 773 (1978), which upheld F.C.C. rules preventing those acquiring a broadcast license from owning a newpaper in the same community; See generally Parden v. Terminal Ry., 377 U.S. 184, 193 n.11 (1964), which distinguished Frost on the ground that the condition sought to be imposed there was outside the scope of the municipality's regulatory power; Watson v. Employers Liab. Assurance Co. 348 U.S. 66, 82 n.3 (1955)(Frankfurter, J., concurring):

> Whatever the survival value [of Frost] it is significant that . . . the opinion did not even advert to the earlier case of Pierce Oil Corp. v. Phoenix Refining Co., . . . in which the imposition of a common carrier's liabilities on a private oil carrier was upheld as a condition on the entry of the foreign corporation;

See also: Portland General Electric Co. v. Federal Power Comm'n, 328 F.2d 165, 173 (9th Cir. 1964) where the plaintiff was required to accept a power license "on such terms as Congress has determined should be imposed in the public interest."

[139] D.H. Overmyer Co. v. Frick Co., 405 U.S. 174 (1972), allowed a debtor to consent in advance to waiver of his procedural due process rights to notice and a hearing before a entry of a judgment against him.

Even without an express agreement, a party's acceptance of the public benefit conferred may operate as an implied waiver of constitutional rights, particularly if the infringement is necessary to protect the public interest served by granting the benefit. Thus, a person who voluntarily seeks public assistance payments must allow home visits otherwise prohibited by the Fourth Amendment.[144] Restrictions on political activity that would otherwise be protected by the First Amendment may be imposed on federal employees,[145] as may restrictions on the rights of military personnel to petition the government.[146] It is well settled that a statute imposing a minimal burden on First Amendment rights will be upheld if it furthers an important purpose within the state's regulatory powers.[147] Mandating reasonable access to a limited number of cable system channels is not intruding on the cable operator's own freedom of speech and upholds an important public interest in furthering the ability of others to speak. Access requirements are a reasonable means of insuring that a community's cable system will operate in the public interest with minimal government regulation.

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[140] Parden v. Terminal Railway Co., 377 U.S. 184 (1964), held that a state, by operating a commercial railroad, waives its sovereign immunity rights under the Eleventh Amendment.

[141] Illinois v. Allen, 397 U.S. 337 (1970).

[142] Patton v. U.S., 281 U.S. 276 (1930).

[143] Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

[144] Wyman v. James, 400 U.S. 309 (1971).

[145] United States Civil Serv. Comm'n v. National Assn. of Letter Carriers, 413 U.S. 548 (1973).

[146] Brown v. Glines, ___ U.S. ___, 100 S.Ct. 594 (1980).

[147] Younger v. Harris, 401 U.S. 37, 51 (1971).

V. CONCLUSION

Cable provides an increasing variety of communications services; it is much more than just "cable television." Cable today carries broadcast television signals, nonbroadcast television signals and local cablecast and access programming. It also offers informational services, data services, and two-way communications which will increase substantially as information retrieval and interactive systems are fully developed.

For First Amendment purposes, cable is a unique communications medium, fulfilling several significant, different communications functions simultaneously. The First Amendment requires evaluating cable on a function-by-function basis according to the nature of the communication and the degree of control over content exercised by the cable operator. Functionally, some channels are much like common carrier services, where the cable operator has no control over content. On other channels the cable operator merely selects the general type of information or programming to be transmitted but does not control the content. The third functional category includes channels that are similar to broadcasting where the cable operator has exclusive control.

The cable system operator has no First Amendment rights in the no control channels. The other two channel categories raise questions about the First Amendment rights of the subscriber and the community as well as rights of the cable operator. A community served by a single high capacity distribution cable system can protect its citizens' First Amendment rights without unduly hampering those of the cable operator. The cable operator may transmit whatever programming and information he believes appropriate, subject only to carriage of those broadcast signals the federal government believes necessary to protect over-the-air broadcasting and carriage of any additional signals the local government believes necessary to protect the First Amendment rights of the community's citizens. Other potential cable system users must also have reasonable access to this conduit to insure it distributes a multiplicity of voices, ideas, and information. Indeed, while the cable operator enjoys an economic monopoly in operating the conduit, the operator has no monopoly rights that the First Amendment protects. Government regulatory requirements, which need not be complex or burdensome, are necessary to balance the community's interests in reasonable diversity and public access against the potential dangers associated with monopoly control of the system by the operator.

The cable industry suggests that cable is an electronic newspaper entitled to the same protection under the First Amendment as the printed press. Such a unitary classification of cable is not only self-serving but illogical. The cable operator does not perform the same editorial role as a newspaper editor. The cable operator may exert full editorial control over some channels of his system but even in this role the operator is more like a broadcaster than a newspaper editor.

Unlike a newspaper, the cable operator distributes a valuable and limited public resource through a pipeline that uses the public right-of-way. Cable is a natural monopoly, in some respects like a utility. Substitutes for various services provided over a given channel of the system may exist in the community, but there is only one cable pipeline, with vast capacity and service diversity potential, and consequent economic advantage. A government franchise effectively gives a system operator a *de facto* monopoly. This alone justifies different First Amendment treatment from the print media which experiences intense marketplace competition.148/

Cable performs important functions similar to broadcasting. Yet cable need not be regulated like broadcasting, with each

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148/ Many communities can economically support only one daily newspaper. However, a wide variety of other publications circulate: national newspapers, regional newspapers, weekly newspapers, national news and specialty magazines, and trade publications, to name a few. *See* e.g. Lippman, *Journal Papers Will Go Daily in September*, Washington Post, August 5, 1981 at 1.

cablecast channel subjected to broadcast-like content regulation. A regulated system of reasonable access which gives expression to multiple community views could eliminate the need for broadcast type regulation of cable.

Cable is a unique communications medium. It and its multiple functions in a community should be so treated under the First Amendment. Sweeping constitutional generalities oversimplify cable's problems, denigrate the First Amendment rights of others in communities it serves, and ignore all the experience of government with cable at the federal, state and local levels.

National
League
of
Cities

1301 Pennsylvania Avenue NW
Washington, D.C.
20004
(202) 626-3000
Cable: NLCITIES

Officers:

President
William H. Hudnut III
Mayor, Indianapolis, Indiana

First Vice President
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CONSTITUTIONALITY OF FEDERAL LAW PROHIBITING STATE OR MUNICIPAL OWNERSHIP OF CABLE TELEVISION SYSTEMS

Brief Summary

Federal legislation to prohibit state or municipal ownership of cable television systems would be unconstitutional. States[1] have the power to own a wide range of businesses, including cable television systems. That power could be denied only if Congress, acting through the commerce clause under which cable television is now regulated, denied states the right to own and operate a business and demonstrated that such a prohibition would not violate equal protection requirements.

Congress' power under the commerce clause is limited when the use of that power conflicts with the retained powers of states under the Tenth Amendment. Two tests must be met: (1) a compelling federal need is demonstrated; and (2) state sovereignty is not significantly derogated. The compelling federal need test cannot be met because municipally-owned systems are subject to the same federal and state regulations that apply to privately-owned systems.

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[1] "States' as used herein refers to states and their instrumentalities (including counties, cities, and towns).

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Furthermore, equal protection requirements, which are applied to federal laws through the Fifth Amendment, would be violated if states are prohibited from owning cable systems. A classification denying one group of persons the right to own certain kinds of property must be based on reasonable or rational grounds. No reasonable or rational justification for prohibiting state or municipal ownership has been proposed.

A secondary argument for justifying a federal prohibition of municipal ownership is that government ownership of the media might result in governmental interference with First Amendment rights. The First Amendment, extended to prevent state infringement of free speech by the Due Process Clause of the Fourteenth Amendment, cannot be used to justify a prohibition of municipal ownership. The courts have shown that they will be more vigilant in safeguarding the First Amendment rights of citizens in communities served by a governmentally-owned system than in one served by a privately-owned system.

The power of states to own businesses such as cable television systems is a long-standing retained right. This right gives cities the power to make basic governmental decisions such as whether the government or the private sector is best equipped to provide public services. That retained right clearly limits Congress' powers under the commerce clause. Equal protection requirements provide an additional restraint on Congress' power to prohibit municipal ownership. First Amendment rights do not in any way justify a federal prohibition of municipal ownership.

I. States have the constitutional right to own businesses.

The courts have clearly established that states and their subdivisions have the constitutional right to own and operate a business, such as a railroad,[2] bank,[3] power company,[4] or fuel yard.[5] This principle is rooted in the Tenth Amendment reservation of sovereign powers: "That in operating its railroad it [California] is acting within a power reserved to the states cannot be doubted." U.S. v. California, 297 U.S. 175, 193 (1936). The Supreme Court sanctioned municipal ownership of a utility as a legitimate exercise of state power:

> The decisions of this court leave no doubt that a state may, in the public interest, constitutionally engage in a business commonly carried on by private enterprise, levy a tax to support it, and compete with private interests engaged in a like activity.

Puget Sound & Light Co. v. City of Seattle, 291 U.S. 619, 624 (1934). Municipal ownership of a cable television system is analogous to municipal ownership of a utility. When owning a business, a state can act like a private business: "A State may, like a private individual, own a real property and receive income." New York v. United States, 326 U.S. 572, 587 (1946) (Stone, J., concurring). The Courts have not limited the scope of this right of the states to enter into a business except to require some public interest benefit in the activity.[6]

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[2] U.S. v. California, 297 U.S. 1975 (1936).

[3] Green v. Frazier, 253 U.S. 233 (1920). This case also upheld North Dakota's right to engage in manufacturing and marketing farm products and to operate building associations.

[4] Puget Sound & Light Co. v. City of Seattle, 291 U.S. 619 (1934).

[5] Jones v. Portland, 245 U.S. 217 (1917).

Some communities own the local cable television system (and many are thinking about municipal ownership) in order to provide important services to the cities' residents at reasonable rates. Small cities sometimes find that municipal ownership is the only financially viable means of obtaining cable service. A great many more municipalities have reserved the right to own the system by including buy back, forfeiture, or condemnation clauses in their franchise ordinances. Such provisions insure that service to the public will continue should commercially provided services be terminated, such as occurred during the economic downturn of the mid 1970's when a number of cable franchises were forfeited. A federal prohibition of municipal ownership would invalidate those provisions. The Tenth Amendment right of cities' to own their systems is consistent with fundamental principles of federalism. "The essence of federalism is that states must be free to develop a variety of solutions to problems and not be forced into a common, uniform mold."[7]

II. The Tenth Amendment and equal protection requirements prevent Congress from prohibiting municipal ownership of cable television systems.

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[6] A municipality motivated only by a profit incentive was within its rights as long as the profits were used for public ends. *Springfield Gas & Electric Co. V. City of Springfield*, 257 U.S. 66, 70 (1921).

[7] *Addington v. Texas*, 441 U.S. 418 (1979). (Substantive standards for civil commitment for mental illness may vary from state to state, and procedures must be allowed to vary so long as they meet the minimum constitutional requirements).

A. Tenth Amendment limitations on Congress' power under the commerce clause

Congress' power to regulate cable television is based on the commerce clause. Article I, Section 8 of the Constitution grants express powers to Congress, including the power to regulate interstate commerce. A cable television system is, to some extent, used for the transmission and distribution of interstate television signals. As a result, Congress has authority under the commerce clause to regulate those interstate aspects of cable television. In addition to this express power, Congress possesses implied powers necessary to facilitate the exercise of its express or inherent powers.[8]

The most significant constitutional limitation on Congress' power under the commerce clause is the Tenth Amendment[9] reservation of sovereign powers to the states:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.[10]

The states existed as political entities prior to the adoption of the Constitution and the creation of a national government. The Constitution did not extinguish all the sovereign rights of the states but rather established a federal system of government enabling the national and the state governments to exercise exclusive powers in some areas and concurrent powers in other. Those sovereign rights of states include the right to own businesses such as cable television.

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[8] See, U.S. CONST. art I, §8, cl. 18, "necessary and proper" clause.

[9] L. TRIBE, AMERICAN CONSTITUIONAL LAW at 301 (1978).

[10] U.S. CONST amend. X.

Cable systems are subject to Congress' power to regulate interstate commerce but this power is limited by the Tenth Amendment.

> The Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system.

National League of Cities v. Usery, 426 U.S. 833, 842-843 (1976) quoting Fry v. U.S., 421 U.S. 542, 547, 547 n.7 (1975). In Fry, the Court found that the application of wage restraints to state government employees under the Economic Stablization Act of 1970 was not a "drastic invasion of state sovereignty" (in part because it was temporary) and that the effectiveness of the regulations would have been "drastically impaired" if the law did not apply to state workers. However, in National League of Cities the Supreme Court subsequently held unconstitutional the application of federal minimum wage and maximum hour requirements under the Fair Labor Standards Act to state employees because of the major impact on "decisions regarding the integral governmental functions" of states. The court stated:

> This Court has never doubted that there are limits upon the power of Congress to override state sovereignty, even when exercising its otherwise plenary powers to tax or to regulate commerce which are conferred by Article I of the Constitution.[11]

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[11] National League of Cities v. Usery, 426 U.S. 833, 842 (1976). The Court held the 1974 wage and hour provisions of the Fair Labor Standards Act unconstitutional as applied to employees of state and local governments because these sections "impermissibly interfere with the integral governmental functions of these bodies". At 851. In discussing the constitutionality of legislation to ban municipal ownership of cable systems, it is not necessary to reach the question of whether a cable system qualifies as an "integral government function" exempt from federal regulation under the commerce clause because municipalities do not seek such an exemption.

To uphold the constitutionality of legislation prohibiting states from owning cable television systems, Fry and National League of Cities require a showing that failure to do so would drastically impair an important federal regulatory scheme and that the prohibition would not impair the states' integrity or ability to function effectively in a federal system. Such a showing cannot be made because municipal ownership does not threaten the federal regulations any more than privately owned systems. Unlike the issues in U.S. v. California,[12] Fry v. U.S.,[13] or National League of Cities v. Usery,[14] the issue here is not whether Congress may apply a particular federal regulation to the activity of a state, but whether Congress has the power to deny states the option to engage in that activity. As previously discussed, the right of states to engage in business activities is well established as an exclusive power of the states.

B. Equal protection limitations on Congress' power to prohibit municipal ownership

The Fourteenth Amendment guarantees equal protection of the laws and these protections apply to federal laws through the Fifth Amendment.[15] Under this constitutional concept, federal and state laws cannot discriminate among various classes unless the discrimination is based on a reasonable or rational classification. See, e.g., Allied Stores v. Bowers, 358 U.S. 522 (1959). The stringency of the equal protection test varies according to the nature of the classification. In every case, the classification must at least be reasonable or rational -- serving some legitimate public interest or rationally distinguishing the class singled out for special treatment. Rinaldi v. Yeager, 384 U.S. 305, 308-309 (1966); Matthews v. Lucas, 427 U.S. 495 (1976). A legislative classification affecting fundamental rights must meet a test of strict scrutiny: classifications involving invidious discrimination (e.g., a classification based on racial or religious characteristics) must overcome a strong presumption of constitutional invalidity. Skinner v. Oklahoma, 316 U.S. 535 (1942); Strauder v. West Virginia, 100 U.S. 303 (1880). Congress' power to regulate interstate commerce is subject to equal protection requirement through the due process protections of the Fifth Amendment. U.S. v. Hawes, 529 F. 2d 472 (5th Cir. 1976). Therefore, any classification scheme enacted by Congress under the commerce power that prohibits states from owning or operating a cable system must pass an equal protection test.[16]

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[12] 297 U.S. 175 (1936).

[13] 421 U.S. 542 (1975).

[14] 426 U.S. 833 (1976). This case overruled the aspect of Maryland v. Wirtz, 392 U.S. 183 (1968), which had upheld the extension of the Fair Labor Standards Act to employees of state hospitals, institutions and schools. 426 U.S. at 840.

[15] The Fourteenth Amendment, by its terms, applies only to the states. However, the Supreme Court has held that the "due process of law" which is applicable to the Federal Government under the Fifth Amendment embodies the "equal protection" concept of the Fourteenth Amendment. Johnson v. Robinson, 415 U.S. 361 (1974).

In Zabacki v. Redhail, 434 U.S. 374, 388 (1978, the Supreme Court stated:

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[16] A municipal corporation has been held to be a person, like any other corporation, for purposes of equal protection under the Fourteenth Amendment. Township of River Vale v. Town of Orangetown, 403 F. 2d 684 (2nd. Cir. 1968).

> When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.

If Congress singles out states for special treatment by restricting a fundamental property right (i.e., the right to own a cable television system), the law should be subject to strict scrutiny.[17] Since no reasonable or rational basis is known for classifying municipalities as unfit to own cable television systems, it does not satisfy the minimum requirements of the equal protection test. Presumably such a classification would have to meet the strict scrutiny test for denial of a fundamental right, a standard that it clearly does not meet. Unlike a state legislature which can arbitrarily withhold the grant of its sovereign powers to its instrumentalities (i.e., municipalities) on the basis of a general concept of the public goal, Congress' classification must be based on its enumerated or implied constitutional powers (in this case the commerce power). No constitutionally adequate basis for such a restriction exists under Congress' regulatory powers.

III. First Amendment rights do not justify a congressional prohibition of municipal ownership.

The First Amendment rights, guaranteed by the due process clause's protection of substantive due process, support rather than undermine the constitutional right of states to own cable systems. Governmental ownership gives the public as much or more First Amendment protection than would a privately-owned system. The government has "[n]o power to restrict expression because of its message, its ideas, its subject matter, or its content." Police Dept. of the City of Chicago v. Mosly, 408 U.S. 92, 95 (1972). Just as the government may not deny use of the city streets to those who wish to picket or distribute leaflets, it cannot deny the use of channels of a municipally-owned system to those seeking access.[18] In contrast, the operator of a privately-owned system apparently has the power to restrict access by particular speakers and for particular ideas unless the municipality required public and leased access on a nondiscriminatory basis in the franchise agreement.

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[17] Although no court decisions address the constitutionality of federal laws restricting a class of persons from owning a type of property, there is little doubt that property rights are fundamental. The due process clause of the Fifth Amendment applies to "life, liberty, or property." Similarly, state rights reserved to the states under the Tenth Amendment are "fundamental" to state sovereignty.

IV. Conclusion

The Tenth Amendment provides that the powers not granted to Congress by the Constitution are reserved to the states. One of these sovereign powers is the state's right to own and operate a business to benefit the public interest.

No overriding federal interest justifies the prohibition of state ownership of cable systems. State ownership poses no threat to or conflict with existing federal regulation of the cable industry -- particularly since such systems comply with the same regulations as privately-owned systems. Consequently, such a law would violate the states' Tenth Amendment rights.

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[18] See, Police Dept. of City of Chicago v. Mosly, 408 U.S. 92, 98-99 and cases cited therein. Also see, Barnstone v. University of Houston, 487 F. Supp. 1347 (S.D. Tex. 1980). The Court forced a university owned public television station to show a controversial film that had been scheduled and then cancelled.

Equal protection standards require that any classification scheme discriminating against a class must be justified. A prohibition by Congress of state ownership of a cable system is a denial of a fundamental right (property right) and must pass the strict scrutiny test. Absent a showing of some compelling justification for such a prohibition (no such showing has been made), such a congressionally enacted proscription would violate the states' right to equal protection under federal law.

First Amendment rights cannot serve as the basis for a congressional prohibition of municipal ownership. Governmental or public ownership is likely to provide greater protection for First Amendment rights than private ownership.

Mr. MITCHELL. Thank you, Mr. Royer.

Mr. ROYER. Thank you, Mr. Chairman.

Mr. MITCHELL. Our next witness is Dr. Alan Pearce who is a telecommunications economist.

TESTIMONY OF ALAN PEARCE, PH. D., TELECOMMUNICATIONS ECONOMIST

Mr. PEARCE. After Mayor Royer's excellent testimony, Mr. Chairman, I feel that there is very little I can add about the structure of the industry. I felt that I was here this morning to introduce industry structure arguments or ideas, and I feel that my thunder has been stolen somewhat.

My name, as you said, is Alan Pearce. I worked for the Federal Communications Commission and indeed for Chairman Dean Burch at the time of the development of the cable television rules and in fact at least two of my colleagues from those days are seated behind me this morning.

As a telecommunications economist in the chairman's office, I worked on the development of the cable television rules. I also worked on Capitol Hill for the House Subcommittee on Communications under an old friend of yours, the late Torbert H. Macdonald; I also worked in the Executive Office of the President.

I am now an independent telecommunications consultant and economist and I am an adjunct professor at New York Law School and also George Washington University.

At G.W., I teach courses in regulatory economics and in telecommunications industry structure.

So those are my qualifications this morning for talking about cable TV industry structure and the program production industry structure. These two, I believe, are closely related.

Cable television began in the early days of television when its aim was to take the TV signals to the remote regions of the United States, particularly the mountainous regions, as Mayor Royer has explained. And in these early days it was the age of the mom and pop industry because it really was a small business. This is not the case today. The mom and pop age is over, and I am afraid I agree with Mayor Royer—probably over forever.

The industry has had a slow and somewhat agonizing growth. It has been resisted by the powerful broadcasters who have complained that cable operators have been merely pirating the signals and not paying for them. The cable operators, for their part, have maintained that they have merely been serving areas the broadcasters have not been particularly interested in, namely rural areas.

Generally speaking the cable operators have won their battles in court but the fight has always been an up-hill and a difficult one.

Today, however, thanks to our advancing technology and a more ample supply of programing, more favorable regulation on the part of the Federal Communications Commission, and a series of pro-cable Supreme Court decisions, the industry is getting stronger—much stronger as a matter of fact—and is a viable and healthy segment of the entertainment and information sector of the communications industry.

As a result, the industry is attracting the interests of multimedia conglomerates. The mom and pop age, as I said, is over. There are currently 4,000 cable systems serving between 8,000 and 9,000 communities in the United States. Although the industry started in rural areas, its most attractive prospects today are those with more than 75 housing units per mile, and the very best, quite clearly, have at least twice that concentration.

Conversely, operators try to steer clear of low-income inner city areas where people are poor and probably cannot afford to buy cable service. And again, I think you heard this from Mayor Royer, cable companies are especially fond of areas where most of the system can be built above ground, where they hitch their cable to telephone or power poles, paying the telephone and electric utilities a monthly or annual rent.

In contesting for desirable markets, cable companies approach local authorities for an exclusive or for a monopolistic franchise to cable a particular community. Cable companies bidding for a local franchise will attempt to win the right to do business there. As a result, local interests usually control 20 percent or more—sometimes 30, but not often as high as that—of any new enterprise. Generally, the large cable company keeps the rest and agrees to build the system if the franchise is awarded.

Today many cable entrepreneurs are examining the business prospects in software in order to add to the profit potential. By software, I mean the programing side of the business—movie and program production.

Programing is not capital intensive and, unlike the cable business, does not require heavy investments in plant and maintenance, largely because there is an excess supply of this in Hollywood.

The program suppliers, especially the pay-TV networks, are dependent on cable systems to market their offerings. So far, cable viewers have been prepared to pay monthly fees of up to $20 and more for movies and sports, approximately half of which goes to the cable company and the other half to the programing company.

Currently there are 21 million homes hooked up to cable in the United States, and since there are about 80 million TV households, cable penetration is 26 percent. About 9 million American households subscribe to pay-TV services, primarily provided by Home Box Office, a subsidiary of Time. Consequently, about 11 percent of TV households have access to pay cable services.

New cable subscribers are being added at the rate of 250,000 a month, so this is very definitely a growth industry. And the industry itself projects that about 40 million households will be on the cable by 1985.

The largest cable system operators—the top 13 companies—account for about 9 million of the Nation's 21 million cable households, and that is approximately 42 percent of the total. But because new subscribers, as I have just said, are being added at such a dramatic rate any figures that I give in my prepared statement are already out of date; as soon as you put them on the typewriter they are out of date.

The top companies, and I will just name a few, include Teleprompter, which is now part of Westinghouse—a major broadcaster and also a major multinational corporation headquartered in Pittsburgh—Teleprompter-Westinghouse claims to be the largest cable multiple system operator with over 1.3 million subscribers; followed by ATC, a division of Time, which has over 1.2 million, and then come Tele-Communications, Cox, Warner-Amex, and Times-Mirror.

Many multimedia conglomerates are attracted to this business, and many of the top companies are powerful in other branches of the mass media. For example, Westinghouse-Teleprompter is a major broadcaster and also a major program producer. Time, Cox, Times-Mirror, and Warner are major publishers. Cox, Times-Mirror, Storer, Viacom, and General Electric are also in the broadcasting business. Warner is a major movie production company. General Electric and Tele-Communications are major equipment suppliers, and Viacom is a program production company.

So they all have interests across other branches of the mass media.

Approximately 30 percent of all cable systems are owned by broadcasters; 20 percent by the program production industry, and 18 percent by publishing chains.

The major pay-TV system is owned by Home Box Office, again a subsidiary of Time, which has 6 million subscribers. So 6 million of the 9 million pay-TV subscribers, or about 66 percent, are with Home Box Office. Showtime, a joint venture of two major cable companies—Westinghouse-Teleprompter and Viacom—is No. 2 with 1.5 million, and the Movie Channel, owned by Warner-Amex—Amex being American Express, has 600,000 subscribers. And again, these figures are out of date because the growth of pay cable is rather dramatic at the moment.

Almost 40 million households are within reach of the existing cable systems so approximately half of the U.S. TV households could hook up to cable, if it were their choice. So subscription lists could be almost doubled at this time, without putting in any additional new plant.

Just briefly to talk about programing, which some of the cable leaders now refer to as software—it is a computer term but it seems to mean something in the cable and broadcasting business. Programing, of course, is absolutely vital to TV broadcasting and to cable television. But at least 80 percent of the film output in the United States is accounted for by seven companies which use their own in-house production facilities or finance the smaller, independent companies.

Two of these seven concerns are conglomerates—Gulf + Western which owns Paramount, and Warner Communications which owns Warner Brothers-Seven Arts.

And the major independents are Columbia-Screen Gems, Disney, MCA-Universal, MGM and 20th Century Fox. MGM has just taken over United Artists from Transamerica Corp. So there is a merger movement with the program production industry as well as in the cable TV industry.

These two industries are very closely associated.

It is my role today to describe industry structure and I do that in my prepared statement and add some tables to it, but I understand the primary focus of this hearing is to focus on minority ownership, and there are others following me this morning who have greater expertise on that particular subject than I.

But to summarize, there is very little minority ownership in either the cable TV or the program production industries—very, very little. And you spoke to that yourself in opening these hearings.

Under present economic circumstances, it appears that there will be little if any improvement in this situation.

Now my only experience in this area of minority ownership was when I was in the Executive Office of the President under President Carter, when the Carter administration was the catalyst in bringing together the National Association of Broadcasters, the American Bankers Association, and certain others, to develop an $11 million minority ownership fund.

Indeed, Pluria Marshall, who is here this morning, was another major participant in that, and also Ben Hooks, executive director of the NAACP, was another major figure, as indeed you were Mr. Chairman. I think at the time you were head of the Congressional Black Caucus, and the Caucus played a major role, along with the Carter administration, and these other parties, in establishing this $11 million fund.

But, so far as I am able to determine at this time none of that money is currently out on loan or has helped minorities to get into the broadcasting industry. So I am sorry that I appear this morning and have to end on a rather sad note.

[Mr. Pearce's prepared statement follows:]

PREPARED STATEMENT OF ALAN PEARCE, PRESIDENT, PEARCE ENTERPRISES

THE STRUCTURES OF THE CABLE TV AND PROGRAM PRODUCTION INDUSTRIES IN THE UNITED STATES

Good morning. My name is Alan Pearce and I am a Telecommunications Economist. I teach courses in Regulatory Economics and Industry Structure at The George Washington University, and in International Business at the College of Business and Management, University of Maryland. I am also an independent telecommunications industry policy consultant and researcher. I have degrees in economics from The London School of Economics, and a Ph.D. in Business Administration, Telecommunications, and Economics from Indiana University.

In the early seventies, I worked as a Special Assistant and Telecommunications Economist for two Chairmen of the Federal Communications Commission. Early in 1975 I moved to Capitol Hill where I served as the Chief Economist for two Chairmen of the House Subcommittee on Communications. In 1977 I moved to the Executive Office of the President where I worked as the Chief Economist in the Office of T~~elecommunic~~ations Policy.

I am the author of three textbooks and of chapters in four others. I write monthly columns for three trade publications, and am the editor of an industry newsletter, Telecom Insider.

Today I would like to attempt to set the scene for these hearings by outlining the structures of the cable television and program production industries.

CABLE TELEVISION

Cable television began in the early days of television, when its aim was to take the TV signals into the remote areas of the United States. It began in the mountains of Pennsylvania, where there was a demand to see television, but the mountains prevented the reception of clear over-the-air signals. Consequently, people with a keen business sense brought in the signals via cables strung along telephone and power poles. */

The industry has had a slow and agonizing growth. It has been resisted by the powerful broadcasters who have claimed that the cable operators have been merely pirating their signals and not paying for them. The cable operators, for their part, have maintained that they have merely been serving areas that the broadcasters have not been interested in serving. Generally speaking, the cable operators have won their battles in court, but the fight has always been an uphill one.

Today, however, thanks to advancing technology, a more ample supply of programming, more favorable regulation on the part of the Federal Communications Commission, and a series of pro-cable Supreme Court decisions, the cable industry is getting stronger and is a viable and healthy segment of the entertainment and information sector of the communications industry.

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* / See Cable Television: Promise versus Regulatory Performance, by the Staff of the House Subcommittee on Communications, 94th Cong., 2d Session, U.S. Govt. Printing Office, 1976; and Richard Olin Berner, Constraints on the Regulatory Process: A Case Study of Regulation of Cable Television, Ballinger, Cambridge, Mass., 1976.

There are currently 4,000 cable systems serving about 8,000 communities in the United States. Although the cable industry started in rural areas, its most attractive prospects today are those with more than 75 housing units per mile, and the very best prospects often have at least twice that concentration. Conversely, operators try to steer clear of the low-income inner-city areas where people are poor and probably cannot afford to buy cable service. Cable companies are especially fond of areas where most of the system can be built above ground, where they hitch their cable to telephone or power poles, paying the telephone and electric companies a monthly or annual rent. Under the most favorable circumstances, a cable system can be built for as little as an average cost of $10,000 for each mile of trunk cable laid. It can be less in some areas, but it can also cost up to $80,000 a mile — and often much more — to lay cable underground in some of the urban areas. Generally, however, the population density in cities makes the higher cost of construction worthwhile. But this is not always the case. In Manhattan, for example, Teleprompter, the nation's biggest cable company, spent about $150,000 for each mile of cable installed for its franchise in the northern half of the island. The company then lost $34 million in ten years. The other cable company operating in New York City, Manhattan Cable, which belongs to American Television Communications, a subsidiary of Time, spent between $50,000 and $75,000 for each trunk mile laid, and again lost money in its early years of operation. Both systems are now profitable.

In contesting for desirable markets, cable companies approach local authorities for an exclusive franchise to cable a particular community. Cable companies bidding for a local franchise will attempt to win the right to do business there. As a result, local interests usually control 20 percent or more of any new enterprise. The large cable company keeps the rest and agrees to build the system if the franchise is awarded.

Once a franchise is won, however, and the cable is laid, the business is relatively straightforward. If, for example, a small system lays 50 miles of cable at an average cost of $10,000 a mile in a community with 75 homes per mile passed and a third of those homes decided to hook up to the cable system, the cost and revenue picture might look like this:

COSTS

Fixed Costs (including franchise fee) 50 miles of cable laid at $10,000 a mile	$500,000
Variable Costs Annual operating expenses — for installation, maintenance, pole rentals, billing, management, etc. (total staff: 4 people).	$100,000

REVENUES

1,250 homes hooked up (50 x 25) paying $9 a month for basic services — annual revenues (1,250 x 9 x 12)	$135,000

Using the above simplified example, it is easy to see how a modest cable system could quickly break even and began to show a profit. Quite clearly, most and probably all of the $35,000 surplus over annual variable costs in the above example would go to paying the interest on any portion of the $500,000 that was in the form of a bank loan. If we assume, however, that the cable system, without providing additional services like pay television, very quickly reaches 50 percent penetration in this hypothetical small community, the economic picture changes quite dramatically:

COSTS

Fixed Costs	$500,000
Variable Costs	$100,000

REVENUES

1,850 homes hooked up (50 x 37) paying $9 a month annual revenues (1,850 x 9 x 12)	$199,800

Admittedly, this is a simplified, unsophisticated example, but it demonstrates the attractive profit potential of cable systems serving small communities, expecially since many small communities can be cabled for less than $10,000 per mile of cable laid.

Also adding to the profit potential of cable TV is the fact that the smaller cable systems, and even some of the larger ones, are not labor intensive. Because they have relatively few people on the payroll, once the system in installed, labor costs tend to be relatively low.

Today, many cable entrepreneurs are examining the business prospects in "software", otherwise known as the programming side of the business. Programming is not capital-intensive and, unlike the cable business, does not require heavy investments in plant and maintenance. The program suppliers, especially the pay-TV networks, are dependent on the cable systems to market their offerings. So far, cable viewers have been prepared to pay monthly fees of up to $20 and more for movies and sports, approximately half of which goes to the cable company and the other half to the programming company.

In Columbus, Ohio, a two-way cable experiment is being tested by Warner Cable, one of the largest cable companies. Known as Qube, it allows viewers, at a basic cost of $10.95 a month, to take their pick of programs on nine pay channels, paying an additional amount for any actually viewed. It also gives them an opportunity to express opinions about how good a snow-removal job the local authority has done, or which national magazine cover has the greatest appeal, plus a multitude of other educational and informational services.

Currently, the 4,000 cable systems in the United States have 21 million homes hooked up. Since there are about 80 million TV households in America, cable penetration is 26 percent. About 9 million American households now subscribe to pay-TV services, primarily provided by Home Box Offixe, a subsidiary of Time. Consequently, about 11 percent of TV households have access to pay cable services. New cable subscribers are being added at the rate of 250,000 a month and the cable industry expects to have over 40 million households "on the cable" by 1985.

The largest cable system owners are Teleprompter, now merged into Westinghouse, which has over 1.3 million subscribers; ATC, a division of Time, Inc., which has 1.2 million subscribers; Tele-Communications, with over 1 m; Cox, with over 800,000; Warner-Amex, a joint-venture by Warner Communications and American Express, with about 750,000 and growing rapidly; Times-Mirror, Storer, and Viacom, all with about half a million subscribers; followed by UA-Columbia, which is being taken over by a major Canadian cable firm, Sammons, United Cable, Continental Cable, and General Electric Cable. These top 13 companies account for about 9 million of the nation's 21 million cable households — approximately 42 percent of the total.

Many of these top companies are powerful in other branches of the mass media, for example, Westinghouse-Teleprompter is a major broadcaster and program producer; Time, Cox, Times-Mirror, and Warner are major publishers; Cox, Times-Mirror, Storer, Viacom, and General Electric are also in the broadcasting business. Warner is a major movie production company. General Electric and Tele-Communications are equipment suppliers, and Viacom a program production company.

Indeed, the National Cable Television Association, the major trade association for the cable industry, admits that approximately 30 percent of all cable systems are owned by broadcasters, 20 percent by the program production industry, and 18 percent by publishing chains.

The major pay-TV systems are owned by Home Box Office, a subsidiary of Time, which has 6 million subscribers; Showtime, a joint venture by two major cable companies, Westinghouse-Teleprompter and Viacom, which has 1.5 million subscribers; and the Movie Channel, owned by Warner-Amex, with 600,000 subscribers. All pay services are growing rapidly.

Satellite technology gave both cable and pay-TV a big boost in the mid-70's. Previously, cable systems had to be hooked up via microwave transmission. A transmitter and receiver had to be set up every 20 miles to fortify signals, and every retransmission point had to be licensed by the FCC. No national cable network could exist under those circumstances. In 1976, Home Box Office started transmitting its programming via satellite, and today it operates a national distribution network. Cable systems rapidly installed earth stations; there are about 4,000 in place and the nubers are growing rapidly. A multitude of cable services are now transmitted via satellite. RCA has been the leader in providing satellite transponders for cable TV services.

THE STRUCTURE OF THE U.S. CABLE TELEVISION INDUSTRY

First 13 Rank	System Operator	Number of Subscribers	Pay-Cable Subscribers	Homes Passed By Cable	Homes In Franchised Areas
1	Teleprompter Corp. (Westinghouse)	1,337,515	444,813	2,700,429	3,607,519
2	American TV & Comm Corp (Time)	1,220,000	783,000	2,711,000	3,815,000
3	Tele-Communications, Inc.	1,034,000	419,000	2,000,000	NA
4	Cox Cable Comm, Inc.	883,585	464,024	1,350,038	2,305,000
5	Warner Amex Cable Comm, Inc.	725,000	450,000	1,200,000	2,400,000
6	Times-Mirror Cablevision	545,361	249,357	905,228	1,266,821
7	Storer Cable Communications	534,100	272,200	1,003,000	2,600,000
8	Viacom Communications	467,000	203,000	850,000	1,340,000
9	Sammons Comm, Inc.	398,386	157,137	598,027	675,000
10	UA-Columbia Cablevision, Inc.	380,000	252,000	704,000	1,100,000
11	United Cable TV Corp	345,400	181,200	621,200	917,000
12	Continental Cablevision, Inc.	325,000	195,000	688,000	1,000,000
13	Gen'l Elec Cablevision, Inc.	250,000	115,000	437,500	462,500
Figures For Total-Top 25 System Opeators		10,595,134	4,981,866	19,322,961	25,916,813

Sources: NCTA; Donaldson, Lufkin and Jenrette, Cable Television, 1981, February, 1981.

THE STRUCTURE OF THE PAY CABLE TV INDUSTRY

Pay TV Networks-Pay Cable Subscribers

	Dec. 31, 1979	Dec. 31, 1980	MarketShare 1980
Home Box Office (Time Inc)	4,000,000	5,700,000	66%
Showtime (Viacom, Teleprompter Westinghouse)	964,000	1,500,000	17%
The Movie Channel (Warner-Amex)	187,000	600,000	7%
Cinemax (Time, Inc.)	-	180,000	2%
Prism	94,000	150,000	2%
Home Theatre Net (Westinghouse)	36,000	125,000	1%
Self-booked & other	651,000	350,000	4%
Total	5,732,000	8,700,000	100%

Source: NCTA; Donaldson, Lufkin and Jenrette, Cable Television, 1981, February, 1981.

Almost 40 million households are within reach of the existing 4,000 systems, and subscription lists could be almost doubled without putting in any additional new plant. Total industry revenues are currently around $2.5 billion, with pretax profits of around $250 million. So cable is still only small when contrasted with the much more powerful broadcasting. Pay TV revenues, which are beginning to grow rapidly, are still below $500 million annually. Pay-TV subscribers pay between $2 and $17 a month for each channel of service.

The cable industry is constantly looking for new ways to increase revenues. Apart from getting more subscribers and charging for additional services like pay-TV, one way is to sell advertising, which is bound to meet with some public resistance. Nonetheless, a major New York ad agency, Young and Rubicam, believes that once cable has signed up 30 percent of the nation's TV households, advertisers will begin to show interest in buying time from cable systems, particularly if they can be sold on a nationwide basis. This is clearly an attractive financial prospect for the cable industry.

Aside from cable and pay-TV, there is also subscription televison, known as STV, and Multipoint Distribution Service, MDS. STV is a fairly recent competitive development and four systems enjoyed early success in Los Angeles (which has two of the systems), Boston and New Jersey. For STV, a traditional over-the-air TV station is used for transmission and the pictures are scrambled except for subscribers who are provided with de-scrambling devices. Generally, viewers pay from $15 to $20 a month for this service. Unlike STV, MDS does not operate on frequencies that can be received by conventional TV, and MDS viewers require a converter to translate signals from 450-2162 MHz to a VHF channel. Additionally, Comsat and others are proposing to launch DBS — Direct Broadcast satelliting — by the mid-80's. The Comsat plan would provide three channels of service — entertainment, sport and information.

Another, if somewhat controversial, programming development attached to the cable is the phenomenon of "superstations". These are locally licensed TV stations whose signals are retransmitted to millions of cable homes via satellite. The four major existing superstations are in Atlanta, New York, Chicago, and Oakland. Satellites are also being used for "occasional networks" beaming sports and movies to broadcast stations and cable systems around the country.

Newer technologies, such as fiber optics, will eventually increase the number of cable channels that television sets can receive to perhaps 100 or more. In addition to bringing new entertainment opportunities into the home, the cable systems will also provide educational and business services. In fact, it will be possible to provide many diversified telecommunications services via the cable. The television set is capable of performing a variety of functions. Companies are already testing data transmission devices and energy-load management systems that will all be hooked up through the TV set by cable. If properly instructed, your TV set may be capable of turning on your washing machine in the middle of the night, when demand for power is at its lowest.

Finally, new technology is expanding the use of the TV set via videodisc and videocassette equipment. Video Cassette recorders can either record programming off-the-air, even while the set is apparently "turned off", or can play cassettes of movies, sports, and educational materials bought from program producers at around $25 to $100 a tape. Videocassette recorders can cost from $400 for an unsophisticated model to around $2,000.

Videodisc machines, which sell from $400 to $600 suffer from the handicap of not being able to record off the air. Industry forecasts, however, say that a quarter to a third of all TV households will own a videodisc machine ten years from now. Videodiscs, i.e., programming for the machines, sell from $15 to $30. The same sales forecasts are made for videocassettes.

Also, there are the plethora of TV video games that are being sold in the hundreds of thousands annually. These games are now being linked together so that people can play chess via television even though they are miles apart.

As a result of all these developments, it is easy to see why there are still exciting and dynamic times ahead in the broadcasting and cable segments of the communications industry.

PROGRAMMING*

Software, i.e., programming, is absolutely vital to TV broadcasting and to cable and pay-TV. In turn, the Hollywood movie and program production industry depends upon its ability to sell its product to the television and cable industry. All the production companies not only attempt to sell their theatrical motion pictures to television and pay-TV, but also produce made-for-television movies and program series for the networks and then put them into syndication on the local television stations. Today, television, which was once the biggest threat to the motion picture business, is a crucial link in its future prosperity.

At least 80 percent of the film output in the United States is accounted for by seven concerns, who use their own in-house production facilities or finance smaller independent producers. Two of these eight concerns are conglomerates: Gulf and Western, which owns Paramount, and Warner Communications, which owns Warner Brothers-Seven Arts. The major independents are Columbia-Screen Gems, Disney, MCA (Universal), MGM, and 20th Century Fox. MGM has just taken over United Artists, which used to be part of the Transamerica Corp.

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* See Richard Griffith and Arthur Mayer, The Movies, Simon and Schuster, New York, 1970; and Tino Balio, ed., The American Film Industry, University of Wisconsin Press, Madison, 1976.

The industry has always been quixotic, having had a long history of cost overruns on major motion pictures, temperamental and extravagant stars, and, all too often, poor management. Part of the industry's problem is the fact that the movie market is inherently speculative and highly competitive, because too many people want to make too many films for too few potential customers, although this may be beginning to change with the development of cable and other home entertainment technologies. To many, the Hollywood industry reached its peak in the years from 1945 to 1948, when attendance at movie theatres averaged 90 million people a week. Today, the figure is between 18 and 20 million a week, or about one billion a year. The 1947, box office gross receipts reached an all-time high of $5 billion; today, the gross is about $2.8 billion, climbing steadily from a low of $989 million in 1967.

The long-run decline in the business fortunes of the industry — from 1947 to the late 60s and early 70s — was due to a number of factors, most important being the growth of the television industry. Other reasons given include the expense of the tickets; the cost of babysitters; dining out, parking, etc.; fears about the safety of attending downtown theatres; general inconvenience; and the lack of suitable films.

The under-35 population comprises about 75 percent of today's theatrical motion picture audience. The 35 to 45 age group makes up over 10 percent. About 65 percent of the American population never go out to see a motion picture. They stay home watching television and cable TV. They have not deserted movies, however, because they see more movies than ever before — but free of charge on television, or at a small cost on pay-TV.

Because of these factors, the movie industry went through a crisis period from 1967-71, when it experienced real financial trouble. During this time, the number of feature films granted code seals by the Code Administration of the Motion Picture Association of America, increased two-and-a-half times, from 215 in 1967 to 478 in 1971. A number of high-budget movies were financial disasters, however, and movie-makers reduced the number of these high budget films, costing from $10 to $15 million, from ten in 1969, to five in 1970, and only one in 1971. Since then, because of the upsurge in business fortunes of the movie industry, high budget movies have again become fashionable, for example The Exorcist, Jaws, Star Wars, the Godfather movies, Apocalypse Now, and The Deer Hunter, among others. Nonetheless, it is still true to say that a high budget does not necessarily guarantee that a movie will be a box office success.

As the high-budget movies declined, the new low-budget "independent" moviemakers took on an increasingly important role in film production. The "new breed" of film-maker, usually using little-known or unknown stars, aimed their product at the under-30 moviegoers. They kept production costs low, often less than $1 million. Because most of the small independent producers lack distribution facilities, they have relied on the major studios and also on major studio financing facilities. While the high-budget movies were losing out to the low budget movies, the major production houses lost heavily, particularly in 1969 and 1970, before rebounding in the mid-70s.

MOTION PICTURE AND PROGRAM PRODUCTION INDUSTRY STRUCTURE

THE "MAJORS"	FORTUNE 500 RANK
Columbia	389
MGM-United Artists[*]	—
Paramount (Gulf & Western)	57
20th Century Fox	337
Universal/MCA	256
Warner	183
Disney	—
Avco Embassy	—

THE "OTHERS"

The 3 TV Networks — ABC, CBS, and NBC

Plus between 40 and 50 so-called "Independents," including Time-Life Films; QM Productions (a subsidiary of Taft Broadcasting); Spelling-Goldberg; TAT-Tandem; MTM; Lorimar; Group W (Westinghouse); Reader's Digest; Playboy; Brut; Metromedia; Viacom; Worldvision; etc.

INDUSTRY REVENUES

1979 Estimates

From film rentals:	$1 billion (mostly going to the majors)
From Network TV rentals:	$3.5 billion (includes news and sports and is shared by all segments)
From syndication rentals:	$1 billion (shared by all segments)
From overseas rentals:	$1 billion — $600 million in film rentals (mostly the majors) and $400 million in TV programming (shared by all segments)
From pay television:	$250 million, but growing rapidly.

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[*] Could make 1981 rankings because of MGM's takeover of United Artists.

Because five of the major movie-makers lost money during some of the difficult years in the late 60s and early 70s, the shock waves helped to rationalize and reorganize what had become, with some notable exceptions, an inefficient industry. For the first time, the industry adopted new management techniques and, spurred on by the new-breed of low-cost movie-makers, the industry synchronized production with marketing. Total overheads have been reduced by cutting down on production and studio costs, and by rationalizing distribution. In addition, advertising strategy has changed dramatically, with much greater use of television to promote a new movie.

Today, investment decisions are based on each movie's profit in four main markets: (1) U.S. theaters; (2) foreign theaters; (3) leasing to television, both at home and abroad; and (4) pay-TV. Some studios will approve production of a movie only if it will be potentially viable in all four markets. Some low-budget movies, however, are aimed at specialized markets, resulting in an upsurge of movies made especially for blacks, teenagers, etc.

Traditionally, the movie business was based on the assumption that it was the occasional "smash hit" movie that allowed a production company to stay in business and cover the inevitable losses of most movies. This idea is now gone forever, and only exceptional movies receive budgets in excess of $10 million.

Perhaps the greatest appeal of the movie industry, apart from the apparent glamour, is the prospect of great profit, and this explains why many firms, both large and small, are tempted to gamble in the business, including Mattel Toy Company, Reader's Digest, Brut, ABC, CBS, and Playboy Magazine. A number of movies, for example, The Godfather, Gone with the Wind, Jaws, and Star Wars, have grossed over $100 million in the United States alone. Movies can be expensive to produce, however. Ben-Hur and The Ten Commandments cost $14 or $15 million, while The Exorcist cost somewhat more than that. Love Story, however, cost only $2.2 million; similarly, Peter Fonda's low-budget Easy Rider cost around $300,000, and American Graffiti, substantially less than $1 million.

The recent boom in the American movie industry is due, in part, to the types of movies that are being made, i.e., space dramas, like Star Wars, supernatural and "scare" dramas like The Exorcist and Jaws, relevant and topical dramas like The Deer Hunter, Coming Home, The China Syndrome, and All the President's Men, topical comedies like Annie Hall and Manhattan, nostalgic Americana like American Graffiti, disaster movies like Earthquake, and the forever popular Superman and James Bond.

In addition, more people, especially the young, have sought escape in movies. Attendance has risen, despite the fact that seat prices have risen faster than inflation. And, thanks to the advertising boom that has boosted the revenues and appetites of the television stations and their audiences, the broadcasting industry is itself partially responsible for the improving picture in Hollywood. The movie industry is earning higher revenues every year from network television, the broadcast syndication market (the rental of films to local TV stations), and from pay-TV.

By 1980, box office receipts exceeded $3 billion. Film rentals — the rentals paid by the theatre owners to the movie companies — have doubled in the 1970s, and foreign receipts have increased by more than 50 percent. In addition, rentals paid by the three television networks — ABC, CBS, and NBC — have been increasing rapidly. Off-network syndication and pay-TV sales are also growing rapidly.

Much of the prime-time television schedule represents the work of a number of smaller producers, many of whom are more successful than the majors in the amount of prime-time television that they produce. Among the more successful are Q-M Productions, a subsidiary of Taft Broadcasting; Tandem or TAT, which are Norman Lear's successful production companies based on the success of All in the Family; MTM Enterprises (for Mary Tyler Moore); and Spelling-Goldberg Productions (Charlie's Angels, etc.). All together, there are about 40 or 50 production companies bidding against each other to provide programming for the television networks.

The problem with all prime-time television series, however, is the high waste factor, and perhaps as many as half of the new series launched in any given television season will not last the full year.

Finally, of course, the television networks themselves are major producers of entertainment, sports, and news and public affairs programming.

As a result of this industry structure, the networks, since they are major purchasers of the Hollywood movie and program production industry, have a significant bargaining edge since they are three purchasers buying a product from 40 or 50 suppliers. The business relationship between the networks on the one hand, and the program producers on the other, is often strained because the producers realize that they could not exist without the valuable market provided by the networks. The networks, for their part, realize that they need much of their product from the Hollywood producers, but also realize that there are plenty of old movies and plenty of old TV series that are available and that can still attract large TV audiences. Pay-TV is a growing but still not significant market for the program production industry, which would like to see it grow to the point where it becomes competitive with the three networks. Occasional networks are put together in order to try to increase the marketing outlets for made-for-TV movies. One such experiment has been Operation Prime Time, where the program production industry has made movies for mini-networks of local TV stations in an attempt to get around the dominance of the networks.

Nonetheless, the program and movie production industry will remain an essential part of the television and cable industries. Hollywood will continue to depend upon broadcasting and cable as valuable markets for its product. And broadcasting and cable, for their part, will continue to demand movies and program series from Hollywood. In addition, videocassettes and videodiscs will provide new business opportunities for the production industry which, in the past, has tended to resist change, preferring to cling to the notion that people will go to the theatres, even in unfavorable weather conditions, rather than choose to watch in the comfort of their own homes.

Mr. **Mitchell.** I am glad that you are here, because you have set forth in a very explicit fashion the problems that we must wrestle with, although you did depress me just a little bit. I have strong concerns about small business involvement and minority business involvement in the cable industry, but I did have some hope that maybe small and minority businesses could be viable participants in the software aspects, but based on your testimony this morning those hopes have dimmed somewhat when you see the interlocking that is taking place that will exclude us.

It seems to me that in order to try to get to small business participation and minority business participation the FCC would have to come up with some kind of regulation comparable to regulations that it has put out, regulations that govern a situation where one company owns all of the television in a given area and the radio station and the print media. We have placed restrictions on that kind of total control.

Would you favor some sort of FCC regulations to prevent what is essentially a monopoly developing in a local area?

Mr. **Pearce.** I would certainly favor an intensive FCC investigation on those lines. Currently, as you know, there are no multiple ownership restrictions in cable television. In broadcasting, as you have said, there are ownership restrictions. But if we are talking about putting ownership restrictions on cable, the trend in this city, and indeed in this country, is going in the opposite direction. I happen to know that FCC Chairman Mark Fowler, whom you know, is going in the opposite direction. He is talking about lifting ownership restrictions on broadcasting in order to allow the present broadcasters to own more stations rather than fewer stations.

So I feel with that kind of a suggestion, Mr. Chairman, you would be going against the national trend, and I do not believe that that kind of a suggestion would be received sympathetically by the FCC at the moment—though I don't know that for certain because I am not a member of the staff any more. But that is my perception.

Mr. **Mitchell.** I am sure I would be going against the trend, but that is not unusual for me.

One last question. What, in your opinion, would it take to help the cable television industry to increase small business participation and minority business participation? How do you begin to make that industry responsive? How do you do it?

Mr. **Pearce.** Well, I agree with some of the suggestions that Mayor Royer made. Some effort could be made on the part of local authorities to insist upon some minority participation because they do award the franchise at the moment, and so that is one factor.

Others include the kinds of things that the Carter administration suggested to the Federal Communications Commission—tax incentives, things of that kind.

And there are other witnesses that are following me this morning that have far greater expertise in this area, but I think something can be done. I think something can be done on the local level and something can be done on the national level. On the local level by mayors and local authorities insisting on some minority participation; and at the national level giving some kind of tax incentives or some kinds of ownership incentives to make sure that minorities are not dealt out of this particular aspect of the mass media as they were broadcasting.

Mr. **Mitchell**. Thank you very much.

I am delighted that Congressman McDade, who is the ranking minority member on the committee, has joined us.

Do you have questions, Congressman?

Mr. **McDade**. No; thank you, Mr. Chairman. I enjoyed your statement very much.

Mr. **Mitchell**. Thank you.

Congressman Hiler.

Mr. **Hiler**. No questions.

Mr. **Mitchell**. Evidently your testimony was absolutely complete.

Mr. **Pearce**. Thank you.

Mr. **Mitchell**. Thank you for being with us.

Our next witness is Mr. Larry Young, a very close and dear friend of mine who is the president of the Center for Urban Environmental Studies. I am sorry I called you Mr. Larry Young. He is Delegate Larry Young. He serves in the Maryland General Assembly in the house of delegates.

Thank you very much for being here with us.

TESTIMONY OF LARRY YOUNG, PRESIDENT, CENTER FOR URBAN ENVIRONMENTAL STUDIES, WASHINGTON, D.C.

Mr. **Young**. Thank you very much, Mr. Chairman. It has been my pleasure for 7 years to represent you in the Annapolis statehouse, and I only hope I have been as effective as you have been as my Congressman.

Mr. Chairman and members of the committee, my name is Larry Young. I am president of the Center for Urban Environmental Studies, Washington, D.C.

The Center for Urban Environmental Studies which is entitled CUES, was incorporated in 1975 as a nonprofit, nonpartisan organization dedicated to establishing a national center to aid urban legislators and environmental leaders in comprehensive urban environmental planning. Its activities include research, technical assistance and information dissemination for governments, organizations and institutions involved in the development of urban environmental strategies.

CUES has been granted a 501(c)(3) status by the Internal Revenue Service.

Also accompaning me is a colleague of mine from Mississippi, Representative Charles Young, who is extremely knowledgeable within the broadcasting industry and will be available to assist in answering any questions that might be asked of me.

We are honored by the invitation to testify today and we commend the chairman, Congressman Mitchell, for his efforts in beginning an assessment of small and minority business participation in the cable television industry today, and the prospects for the future.

The telecommunications problems and needs of the Nation today and in the future can only be met through increased cooperation and partnership between all levels of government, the private sector and the public. Telecommunications policy development and decisionmaking have direct and significant effects on the economy, education, employment, environment, health, housing, and community development.

Every citizen of the country is affected by the availability and cost of information obtained through telecommunication systems in terms of where they live, work, shop, play, and go to school. Yet, all citizens are not equally involved or represented in the process of telecommunications planning, implementation, and evaluation.

Historically minorities and the urban poor have been inadequately represented in these processes. As a result they have frequently become the victims of poor telecommunications planning and decisionmaking.

Thus, as our Nation works to establish a coordinated, progressive national telecommunications policy to aid urban areas the policy cannot be national without addressing the unique socioeconomic and educational needs of minority, urban and low-income communities.

The need for a telecommunications policy that promotes energy conservation, coordinated economic development, and elimination of interference means little to minority and low income communities without a special and intensive telecommunications education and outreach program in these areas.

Minority public officials are a natural conduit for outreach activity in minority and urban areas. These officials often enjoy high visibility in minority communities, have access to information beneficial to these communities, and are frequently better able to mobilize vital institutions in the community in a concerted effort to resolve social problems. These officials should, therefore, be considered cornerstones of education programs in the minority communities.

However, to exercise effective leadership on telecommunications issues in urban and minority communities, minority public officials must themselves not only be educated about the multiproblems of telecommunications, but also must have access to information sources.

These public officials have little time or resources to waste on comprehensive education programs which do not include the particular and crucial needs of urban and minority communities. They must have information which keeps them abreast of Federal, State, and local telecommunications policies, informs them about the programs of Federal and State telecommunications-related agencies and is particularly focused on the needs of their communities.

Existing information systems in our cities do not serve all segments of the population in an equitable fashion. Minorities and the low income living in the inner cities often have special needs that are not addressed, oftentimes increasing costs for minorities, to abandon telecommunications services which are the lifeblood of these communities.

This problem is exacerbated by an inadequate supply of inexpensive alternatives to telecommunications services which require more expensive systems.

Higher income workers have income flexibility, minorities and the low income are sometimes forced to do without services affordable and available to the general public. Poor information systems often mean that minorities and the poor are often isolated from jobs, from business opportunities and other public services located outside their community.

Similarly, well-planned and coordinated telecommunications policy can bring economic development, employment, better services and a healthier environment for minority and urban residents, as well as industrial and downtown interest.

Because telecommunications decisions have such dramatic potential for community disintegration or community development it should be a matter of national policy to assist urban minority and low income communities to attain full partnership in telecommunications decisions affecting their lives.

A progressive telecommunications policy can help in solving some of the pressing urban problems facing our cities. It can help aid in revitalization and promote systematic development.

In the end there is a close connection between telecommunications policy and urban problem solving.

An organizational vehicle is needed for maximizing the constructive involvement of minority State legislators in telecommunication programs within their legislative districts as well as throughout their respective States. The underlying assumption motivating this recommendation is that education relating to telecommunication problems in minority communities is insufficient and that effective policy in these communities requires a special and well-coordinated effort.

By using the minority State legislators as focal points for education, minority communities can be drawn into the telecommunications programs at the State and Federal level.

It seems to be one of the major objectives of the present administration under the title of "new Federalism."

To fulfill this new objective CUES proposes a program which unfolds in three logical phases over a 2-year period. It involves a needs assessment and a major minority telecommunication briefing.

The CUES program involves the development of effective and intensive education and training programs for minority State legislators on telecommunications issues.

Finally, the CUES program involves the development of comprehensive and classified information on the multiple aspects of telecommunication policy and the establishment of an efficient information and referral system for minority State legislators.

Our recommendation is designed to heighten the involvement of minority State legislators in the telecommunication decisionmaking process of their respective States as well as in the minority community.

We believe that it is necessary to assess the degree of minority State legislator involvement in telecommunication-related activity and to determine the information and training needs of these officials in dealing with the telecommunications issues.

We need to determine whether or not minority legislators serve on legislative, statewide, and other committees related to telecommunications; whether or not they know about and are involved in State and regional telecommunications agencies, commissions and departments; and whether or not they are satisfied that they understand the various intricacies of the telecommunications decisionmaking process at the Federal and State levels.

In addition to conducting an assessment legislators need and should receive an extensive telecommunication policy overview and briefing on pending as well as existing telecommunications policies, regulations and plans.

Thus, CUES recommends that an effort be undertaken to: One, determine the nature of minority State legislator involvement in telecommunications issues; two, determine what information and training needs these minority State legislators have themselves identified concerning telecommunications problems; three, determine what needs the legislative districts of these legislators have that are related to telecommunications; and four, identify organizations and institutions which can be utilized in training minority State legislators.

And on a very personal note it would be well not to have us be approached and used for our political patronage purposes or try to be used in terms of orchestrating the fact that we might have some name recognition in our community. We would much rather be treated as equals and brought to the table of deliberation so that we can be full partners and be able to articulate without just having our names used, as has been the cases of some legislators, trying to be used by the industry around the country.

Mr. Chairman, I want to thank you and the subcommittee members for the opportunity to share our views on this topic, and I and a member of my staff, along with Representative Young from Mississippi are available to expand on our recommendations. I can assure you we want to work closely with you and this committee to achieve this worthy national goal of involving the minority community in telecommunications.

Mr. MITCHELL. Thank you, Delegate Young, for a very forceful statement.

I take it from your testimony that you would favor the continuation of local control, the ability to regulate the local cable TV systems?

Mr. YOUNG. Most definitely, sir.

Mr. MITCHELL. With reference to your last four recommendations, it seems to me that these almost of necessity would have to be carried out at the State level rather than at the Federal level. I think obviously it is almost beyond the power of the Congress to do a good job in terms of these four recommendations.

Are you suggesting that these are primarily recommendations for states and cities to follow?

Mr. YOUNG. Certainly—I have not seen the League of Cities policy, but I would certainly think that a State that was going to get into this should be considering our four points.

I guess what I was considering, if there was going to be some type of legislation that in some kind of preamble, in certain parts that you would definitely call for a greater role for the States, and certainly not have the minority State legislator not inclusive for that involvement.

Mr. MITCHELL. Now, we've heard testimony so far about the absence of small businesses in cable TV, and certainly the absence of minority business. The argument that is raised or the "justification" for that absence, and justification is in quotes, is that cable TV is very costly. The costs are almost prohibitive; therefore, minorities simply cannot raise the money to own and operate a franchise.

Would you respond to that argument.

Mr. YOUNG. Well certainly, the honorable gentleman who is following me is one of the prime examples that indeed minorities can raise the money. He and two or three other gentlemen who I am aware of in the country have been able to raise the capital. Certainly we need more.

I think that if we are invited to the table, that we can have within our community individuals who will find the resources to be party to any proposal that is put forth on any local level. I do not accept the fact that we cannot find the capital. I believe we can and it is a matter of being invited in.

Representative Young would have told us that it took them 11 years in Jackson, Miss., to get a television station. It wasn't because they didn't have the money. They just were not invited in to be full partners in the process.

And I suggest to you that indeed if we are invited to the table the capital can be found.

Mr. MITCHELL. Just two more quick questions.

One, in your testimony you pointed out the need for much more information to be disseminated on what is developing in the cable industry. That, it seems to me, is the responsibility of the FCC. What has been your experience with the FCC in receiving information on a timely basis, full information about new developments in the cable industry?

Mr. YOUNG. In preparing for our testimony we did an assessment of the 325 minority State legislators around the country, to just to see indeed just how involved they were. With the exception of being approached by some cable company other than FCC they were not informed. They have not been informed. They have been reading up on it.

It showed to us very clearly that there is a big gap in the communications between the FCC and minority State legislators. And regretfully, it is just not in telecommunications, but the Commission directs the telecommunication. And so I have to say that they have a job to do, and certainly we as legislators are also going to have to begin to make this a priority of ours and seek them out inasmuch as they are there and they exist to give the information.

Mr. MITCHELL. The last question, and I think you can answer it with a yes or no. I assume that you would see the multiple franchise approach as being the best way to involve a small and minority business ownership?

Mr. YOUNG. Simply, yes.

Mr. MITCHELL. Thank you very much.

Congressman McDade.

Mr. MCDADE. Thank you, Mr. Chairman.

I want to welcome Parren's delegate to the subcommittee today. We are glad to have you and appreciate your statement which is very helpful.

Let me just inquire, have you any idea of the extent of minority and small business participation in the national cable system? Would you know what it would be?

Mr. YOUNG. I would not, Mr. McDade. No, I would not.

Mr. McDADE. OK. We could probably get that as we go along. Let me ask another question.

I know that under the rules of the FCC, that a television station which goes through its licensing procedure must indicate that it has served the public interest in its community. And indeed if it has not, that license can be revoked. I believe there are some instances—not many—but a few instances where that has occurred.

What is your experience with respect to the local government's franchising of cable television? Does the same requirement exist for the organization that has a franchise for *x* number of years, depending upon the agreement they entered into? Do they have a responsibility to meet the public interest of their community?

Mr. YOUNG. I would feel that they certainly would have the responsibility to do so. I would have to, based on the two cases which I can feel some close identity to, which is the Jackson, Miss., case which I referred to, and my own city of Baltimore, Md., that in the Baltimore case there has been definitely an open process. And so I am very pleased with that.

However, in the——

Mr. McDADE. May I interrupt? Is it a matter of contract or is it just a matter of a willing agreement between the parties that are involved?

Mr. YOUNG. In the Baltimore case it is a matter of having a chief executive who is extremely forceful——

Mr. McDADE. Involved in the problem and wants to work with you?

Mr. YOUNG. That's right.

Mr. McDADE. But it is not a matter of contractual obligation as it is a matter of licensing renewal with the television station?

Mr. YOUNG. Eventually I am certain that it will be included in the process, but right now, because we are in our formative stages it has been based on the leadership of those who are trying to bring cable into the city.

Mr. McDADE. So in essence it depends on the individual you have to deal with?

Mr. YOUNG. That's right.

Mr. McDADE. OK. Thank you very much.

Mr. YOUNG. Thank you, sir.

Mr. MITCHELL. Congressman Hiler.

Mr. HILER. No questions, Mr. Chairman.

Mr. MITCHELL. Congressman Smith has joined us.

No questions?

Mr. SMITH of New Jersey. No questions.

Mr. MITCHELL. Thank you very much.

Mr. YOUNG. My pleasure, Mr. Congressman.

And it's a nice picture up there, too.

Mr. MITCHELL. I was hoping that no one would refer to that picture, simply because so many Members of the Congress have stopped me in the hall saying—we unveiled this portrait on Monday, wasn't it? And so many Members have stopped me in the hall saying, "I am sorry I was not there for the hanging of Parren Mitchell." [Laughter.] So I would rather not hear too much about that.

Just before hearing our next witness, Mr. Sutton, Congresswoman Cardiss Collins wanted to make a statement before the subcommittee. She cannot be here this morning, and I would ask unanimous consent that her statement be submitted for the record.

[Mrs. Collins' prepared statement follows:]

Prepared Statement of Hon. Cardiss Collins, a Representative in Congress From the State of Illinois

PROBLEMS OF SMALL BUSINESSES WITHIN THE CABLE TELEVISION INDUSTRY

Mr. Chairman, distinguished colleagues, ladies and gentlemen, as the Representative of the 7th Congressional District in Illinois, I am pleased to present testimony on the problems small businesses encounter within the Cable Television Industry.

It is estimated that there are 10.8 million small businesses in the United States; with less than 231,000 businesses owned by blacks. In the face of high interest rates, the negative economic climate and recissions, it is expected that the number of black owned businesses will drop substantially.

In the face of such discouraging news, how can blacks and minorities and small and minority businesses participate in the cable television industry today? An industry which according to 1978 figures is a $1.5 billion business. A business that stands to grow even larger because (1) the marketplace is ready and ripe for the plucking (everyone wants cable!); and (2) because the FCC has taken significant steps to deregulate the cable industry.

According to the "Broadcasting and Cable 1980 Yearbook" there are 4,200 operating cable systems in the United States, servicing some 10,200 communities. Another 1,300 systems are approved but not built. Operating systems currently reach about 15.1 million subscribers, over 44 million people, approximately 20 percent of the Nation's TV households. Costs of laying cable range from $8,000 per mile in rural areas to $12,000 in urban areas and up to $80,000 where underground cable is required. Over 30 percent of all cable systems have ties with broadcast interests, almost 18 percent with program producers and approximately 13 percent with newspapers.

It goes then, without saying that the cable marketplace is ripe in terms of increased growth, but the cost is substantial. The high cost of wiring homes requires a tremendous amount of capital. The investment is huge in terms of capital needed initially and to meet ongoing expenses. It is not unusual to find a number of cable companies spending half a million dollars just trying to get the bid so that they can begin wiring homes.

What does this mean to minorities trying to obtain a piece of the pie? Plenty! It essentially means attempting to "infiltrate" an industry which either because of franchising and capital problems, or discrimination excludes for the most part minority participation in employment and ownership.

The cable industry has a very disappointing record in regard to both minority employment and ownership. Recent statistics released by the FCC indicate an overall minority employment representation of approximately 12 percent as of 1979. Black ownership is less than 1 percent.

There are, of course, exceptions to the rule. There are minority-owned cable systems in operation or in the process of being developed. William Johnson (Columbus, Ohio) and David Bentley (Alaska) are the only two blacks which own and operate cable systems. Black owned and not black operated systems are located in Newark, N.J., Cleveland, OH, Montezuma, CA and Tuskegee, AL, etc. Robert Johnson of Black Entertainment Television (BET) provides the only cable television satellite network providing black oriented entertainment and sports programming to cable television households throughout the United States

From all indications, it is highly conceivable that by 1990 basic cable revenue will be $5.4 billion a year with pay cable revenue reaching 4 billion dollars. In the face of such staggering figures it does not take a genius to realize that minorities have hardly made substantial headway as far as obtaining a decent piece of the pie. So, what can we do to maximize our participation on all levels of the cable industry, from owning and operating systems to providing hardware and software services to becoming skilled, trained technicians?

The budget cuts enacted by President Reagan will have an adverse effect on minority persons in the communications industry in particular. At present, the Commission is considering abolishing its Minority Enterprise Division, and its EEO unit. This will bring Commission involvement in nurturing diversity of programming to a standstill. As the Economic Development Administration and the Small Business Administration are also threatened with severe cuts, the future use of these agencies as a funding tool for minority broadcasters becomes questionable.

So, in addition to seeking out banks, SBA, and insurance company loans, and from sales of stock, (traditional resources) careful attention must be paid to active community involvement and public access requirement.

Community involvement in the formulation of local franchise requirements regarding ownership.—The establishment of regulations regarding franchise ownership is largely formulated at the local level by the local governing body representing the area granting the cable franchise. Citizen participation in the formulation of ownership requirements—e.g., the requirement that minorities be represented in the ownership structure as a condition of granting the franchise—could help to develop minority ownership opportunities.

Involvement in the formulation of the public access requirements.—As in the case of ownership requirements, the jurisdiction to impose public access rules on cable systems rests at the state and local levels. Citizen participation and pressure in the development of specific requirements regarding the amount of and the assistance in producing public access programming could be developed to enhance minority as well as all local citizen participation.

In 1979, the Supreme Court ruled that the Federal Communications Commission (FCC) lacked the jurisdiction to impose access rules on cable systems. The FCC lack of authority to require public access to cable channels does not mean that minority interests in a community will be ignored. Minority interests can participate by demanding access as part of the local franchise agreement. In addition, we can work toward requiring a percentage of local ownership and the appointment of local directors who have the decision-making authority.

Owning a cable system is not the only way to share in the cable pie. We need to investigate the installation of cable systems, programming—develop and address the needs of underserved and served audiences, and parts and equipment.

Minorities must identify all aspects of the cable industry and then determine just which segment of the market they want to be involved in. From there its a matter of obtaining the capital needed for such an investment. This applies whether your interest is in cable ownership, or participating in spinoff areas of cable, i.e. hardware, software. Apply for SBA loans (although with the new administration this avenue will be tighter in terms of eligibility and finance available.) Attend conferences and seminars on minority enterprise as well as on cable television opportunities. Begin to develop a structured network of all minorities throughout the country who are directly involved in the industry. Share information and be willing to lend others a hand if it means making sure minorities are employed in your operation.

The National Cable Television Association (NCTA), has a booklet entitled, "Careers in Cable," which identifies employment opportunities in franchising, construction, system operation, production and programming and marketing and advertising. Employment information such as this needs to be disseminated to high schools and colleges so that our youth can become aware of the opportunities available to them in the cable industry. Cable is a growing industry that could feed upon minority talent if we see to it that our talent is directed its way.

The ownership of cable is overwhelmingly white, however, there is growing encouragement that more and more black businessmen will successfully attempt to bridge the gap and seek ownership of cable franchises, own or produce programming services, become involved in goods and services or work in skilled, semi-skilled or unskilled capacities.

It is necessary, therefore, to work toward increased education of black entrepreneurs in ownership and move toward increased consolidation and concentration of resources.

There would seem so many different ways that we can work on in terms of ensuring minority access and participation in the industry. We are talking of being involved on various levels: From requiring large amounts of start-up capital needed to own a system, to bidding for a piece of the pie, to owning a programming or equipment company to training to become a strand mapper.

The restrictive barriers are there, but so are the financial rewards.

Mr. MITCHELL. I am very delighted that Mr. Percy Sutton, who is the chairman of Inner City Broadcasting Corp., is with us. He is our next witness.

It is good to see you again, Percy.

Mr. Addabbo had asked me to give his best regards to you, but I see he managed to slip in and join you.

TESTIMONY OF PERCY E. SUTTON, CHAIRMAN, INNER CITY BROADCASTING CORP.

Mr. SUTTON. Thank you very much, Mr. Chairman.

I must comment, Mr. Chairman, you do hang well there. [Laughter].

Mr. Chairman, Mr. McDade, Mr. Hiler, Mr. Smith, I want to thank you very much for calling this hearing. I am delighted to be in such good company. Sir, I know your State Representative Delegate Larry Young. I have known him and respected him for a long time. I also see Representative Charles Young of Mississippi in the audience here.

My testimony will be followed by one of the brighter men in cable television, and it attests to something else about what is happening in cable television. The person I am speaking of is Bob Wright who is president of Cox Cable.

Mr. Wright's position at Cox Cable attests to the fact that one can leave one industry and go to another industry and still be a giant, or get to be a larger giant, in that industry. It is something that continues to happen in the cable television industry in America.

I have had a long-term interest in cable television and have been troubled, Mr. Chairman and distinguished members, by the absence of small and independent entrepreneurs in meaningful roles in the rapid expansion of the cable TV industry in the last 5 years.

As a child, and later as a young man, I used to read Popular Science and Popular Mechanics magazines, and I saw pictures, and I read predictions of helicopters being able to fly about, from rooftop to rooftop, as a proposed means of transportation—mass transportation—in the 1950's and the 1960's. Well, the 1950's came and the 1950's went; the 1960's came and the 1960's went; the 1970's came and the 1970's went. And the 1980's will go and we will still not have mass transportation by helicopters.

Now I mention this only because more than 15 years ago, when I became the chief elected official in the borough of Manhattan, in the city of New York, grand predictions were then being made about the impact that cable television would have upon our lives; how it would render broadcasting into the age of dinosaurs, all through the use of its advanced technology.

As an example, there were suggestions that citizens who would subscribe to cable television would be able to communicate directly with their neighbors without the use of the telephone; that these same cable TV subscribers would receive programing quality of an advanced nature, with clarity of picture and absence of advertising and that all of these positive changes would be in a short time nothing but the norm.

At the time, cable television was advertising itself primarily as an alternative entertainment medium, and so the informational and data explosion that was to accompany later changes was not then emphasized.

I took an intense interest in all of this because, as chief elected official of Manhattan, it was my responsibility to learn that cable television and cable franchising industry so that I, as a member of the board of estimate, the New York City governing body, could pass upon ratemaking, community access and involvement and delivery of services by the two cable television companies that in 1965 had won the franchises to serve the southern and the northern part of the borough of Manhattan in the city of New York.

It is now the year 1981—15 years since I began my presidency of the borough of Manhattan—and 4 years since my departure from that position. Yet, even today, there are only 26 cable TV channels operating in the northern part of Manhattan where I live; and none of these channels have the dynamic, creative, and exciting interactive or 2-way capability which we were promised, and there are fewer than 70,000 cable TV subscribers out of a potential of one-half million-plus people.

This addresses itself to the absence of progress during that period.

Now I should pause just to tell you there are a number of reasons for that absence of progress, but what I want to suggest to you is that only in the last few years has cable television in Manhattan and elsewhere in this country even begun to deliver upon its promises of the past.

Let me quickly state to you that despite the absence of dramatic progress in the many cable television systems in this country I remain a fervent believer that this decade of the 1980's and that of the 1990's will see the realization of cable's potential through the growth of entertainment and information networks that are specifically designed and inspired by the cable explosion we are presently experiencing.

To what do we attribute this new faith in cable's ability to deliver?

Over the last few years, particularly in the last year, as I was going through the borough of Queens, which is one of the 5 boroughs of the city of New York, with more than 744,000 homes, all having the potential of being wired for cable television, the question would be asked of me, "Why, Mr. Sutton, in Manhattan where you come from, has cable television not expanded?" I would explain that in 90 percent of Manhattan, the cable television wiring must be carried through the streets underground.

And I would further explain that in some parts of Manhattan we have as many as five levels of services being delivered. One level for sewage, another level for water, another level for telephone, and that all of these complicated the wiring of the borough of Manhattan. But then I would go on to explain that that was not the entirety of it.

A significant part of the problem had been the fact that there was not the climate created so that money would be advanced, and I explained that in the course of the 11-year period of my being borough president many problems had occurred to impede the 2 cable TV systems there.

The 2 companies operating in Manhattan were Teleprompter in the north and now that which is known as Manhattan Cable in the south—during the period; they had continual problems of raising money, even protecting themselves from bankruptices because of the high cost of construction and operation.

But one of the reasons is that there was not the proper climate of belief in cable television. What then has happened since that time?

I would suggest that there are several substantive reasons that a change in attitude has taken place with regard to cable television. Principally these reasons are as follows:

The dramatic entry of the large, moneyed groups into cable television, as represented by one of your speakers. Incidentally, Mr. Chairman, you have attracted a number of very able people in this industry here to your meeting this morning.

I am appreciative because it deals with the minority issue, and from time to time when one complains about the track record of America, one says that another who criticizes may not be patriotic. As one who has served in two wars—World War II and the Korean conflict—I think I am a great patriot. But patriotism permits me some criticism from time to time.

And I believe a government, a society, is best when all of the components of that society have a meaningful role. I believe in business, I believe in the free enterprise system, but I believe that business operates best when all people in that society have an opportunity to be beneficiaries. Not beneficiaries merely as consumers of goods, but beneficiaries as entrepreneurs. And for that reason I am appreciative that so many people have come out this morning to testify on a subject that disturbs many people.

Any time one raises a minority or race issue, society prefers that one would rather not. Society seemingly would rather not hear about these "unpleasant" things. Somehow it may go away. Well, we will never have a whole society, Mr. Chairman and distinguished members, until all people are able to participate, and I think that is what you are directing yourself, all of you, toward, here today.

Let me quickly state to you that there is so much that ought to be said, but with regard to that which is happening today, in addition to the entry of the large, moneyed groups in cable television, a thing that has brought about change is the rapid progress in satellite communication, and technology, and most importantly there is not the prospect of wiring the urban areas. Because right now what is happening is that we are seeing the Dallases of America, the Houstons of America, the Pittsburghs, the New York Citys, the Los Angeleses, the Bostons—as the prime markets for cable expansion.

And Mr. Chairman and distinguished members, you are talking about cities that over the next 10 years will produce benefits of billions of dollars. It is the most dramatic thing that is happening on the scene of America today, and it is going unnoticed too often.

But it is not going unnoticed, as a previous speaker, one just before Mr. Young, said, it is not going unnoticed by the newspaper companies, the giant newspapers; it is not going unnoticed by the

Washington Post; it is not going unnoticed by Time, the New York Times which has gotten into it, and I kiddingly say that one of the friends that I have had in years gone past is a man by the name of Irvin Kahn.

Irvin Kahn was a genius in the field of cable television. I got to know him on an intimate basis when he used to appear before me, before the board of estimate in the city of New York, in the cabling of the northern part of the Borough of Manhattan. Irvin Kahn was convicted. Irvin Kahn was sent away to jail. And he went down to Montgomery, Ala., to an old air base where I once served in the Air Force, many years ago.

And there, while in—what is it called—minimal detention, he, through his genius, was able to plot that which he would do with regard to cable television. When he got out and got FCC clearance, he went back into the field of cable television and put together a string of franchises in southern New Jersey and other parts of New Jersey, and later sold them to the New York Times. Thus I say that he cleansed himself by being able to sell to the great New York Times, which decides what morality really is.

Irvin Kahn sold to the New York Times. The New York Times is in fiber optics. The New York Times is in a variety of things involved with cable television, so the giants of the entertainment industry, the programing industry, the newspaper industry, and the finance industry have.come in. Why have they come in, Mr. Chairman and distinguished members? The have come in because they see a good thing in cable television.

And, as I have said before, either we are going to witness a number of bankruptcies in cable television in America or a lot of people are going to make a lot of money out of cable television.

Now let me disregard my printed statement here and just discuss issues without notes.

What am I concerned about? What do I want to say to you about the possibilities of minorities in cable television? You have my printed document there, but let me just suggest to you that it is not enough here in America to have minorities involved in the crumbs that fall from the table of business.

It is not enough to have minorities, whether those minorities be black, Hispanic or otherwise. It is not enough to have women just involved in the service industries.

We in our company, Inner City Broadcasting, say very often—and we do not do it with tongue in cheek—that we are equal opportunity employers.

We are a black owned company, principally, but money has a color. Green. And much of the money which we have is borrowed money; borrowed from banks and borrowed from insurance companies. We live in America and we feel we have an obligation and if we as blacks want white people to hire black people we feel that we ought to be sure that we not only get the best people, but that we practice affirmative action in the process.

As employers we seek out people for their efficiency; and oftimes if we have two people who are equal, one is white, one is black, and if we feel that in all justice there is a need for additional whites in our structure we will hire the white person to insure proper racial representation.

Now what I am saying is that we find ourselves comfortable with this affirmative action program. And what we seek in cable television is affirmative action in ownership, not just in employment. We do it in radio. We are owners and as owners we are then able to be equal opportunity employers.

And what I am concerned about is that we not just be dismissed from ownership because we are minorities. We do not want to be dismissed as minorities as the people who can work for others stringing the wires on the poles. That is good; we want that. They will also say to us, we will let them install the converters. This too is nice. We want that. But, minorities want more than employment.

But what we want to hear said as minorities is: "We will let minorities own a part of the action." Because when minorities own a part of the action minorities set the policy, and get the many collateral benefits that flow to a minority community as a result of minority business people being able to set policy.

Now in recent years there has been much discussion, and you raised the issue here this morning as to whether there should be more than one franchise permitted by a city. The mayor of Seattle has answered "yes." Our own experience in New York shows a desire for more than one cable television company so as to provide competition. In our own experience in seeking a franchise in New York City we have repeated our belief that "America is a place for competition. New York City is a place for competition." A single cable television franchise may not do as well as a number of franchises competing. We saw this dramatically exhibited in the Borough of Queens.

There are 14 community boards in the Borough of Queens. It was decided by the city director of franchises that he would wish the impression to be gained that the entirety of the Borough of Queens, all 744,000 homes, would be wired by one single company.

Well gentlemen, I do not know whether you are aware of it, but nobody has wired 744,000 homes. Nobody has yet wired 200,000 homes. Maybe nobody has wired 190,000 homes yet.

The largest number of homes wired were by this gentleman, Robert Wright, by his company—Cox Cable—in San Diego. How many subscribers do you have now in San Diego, Bob Wright?

Mr. WRIGHT. About 210,000.

Mr. SUTTON. I am sorry. Since when?

Mr. WRIGHT. Since yesterday.

Mr. SUTTON. I stand corrected. There are 210,000 now.

The point, though, remains—if we are talking about 744,000 homes, as in Queens, we are calling upon people who have been building and operating rooming houses to now build and operate skyscraper hotels with thousands of rooms.

Such is the relationship between that which has been done in the past where they have wired 18,000 homes, 20,000 homes, 30,000 homes, and that which we are talking about in wiring, programing, and operating a city franchise with 700,000 plus homes.

In Queens we said that we thought the best results could be achieved not by giving the Queens cable television franchise to a single operator but to multiple franchises, where each franchise operator has to compete with another franchise operator.

Now there are many reasons that people do not favor multiple franchises—principally, because we are now in the period of that large attack fish called barracuda. What giants have come into the field now, and there is much throat-cutting that is going on. Scandalous things are being suggested by one giant against another giant, and placing the accusations in bright lights. We are seeing cutthroat competition between the giants who want cities granted to a single franchise operator.

The giants are suggesting that there ought to be only one franchise to a city. But sir, if minorities are going to be able to participate in franchising, a better way for it to go would be for there to be multiple cable television franchises within each city.

Now one then asks, what are the disadvantages of multiple franchises? Some will quickly say, well, if you have multiple franchises there is going to be confusion and conflict; some areas of the city will not be wired as swiftly. Well, I think the best chance for wiring all parts of the city is for there to be multiple franchises.

Now then the question comes, how can minorities participate? They can participate in joint ventures. On a subjective basis my company recently got a commitment from an investment banking company in New York for $300 million. We are black. But where would we get a commitment for $300 million? From L. F. Rothschild, Unterberg, Towbin, an investment banking company of New York.

I said the color of money is green. Rothschild is not making a commitment to us because we are black. Maybe they are making a commitment to us, in spite of the fact we are black. However, I think they are investing in us because they believe in our ability as business people.

We have a contract with Cox Cable for the construction and operation of a cable system in Queens to be owned by us. The question is will other giants do joint ventures?

I said this is a period of barracudas; that is, there are very few cities still left unfranchised. There are but few giant cities that are left. If multiple franchises are granted in a city, I am certain they can get one of the giant cable TV companies to do a joint venture with them.

And the reason is very simple. It may not be the reason that Cox Cable is with us, but I suggest there are certain advantages of a giant cable television operator joining in with a minority in a joint venture in a franchise area in which except for the minority partner, the giant would not be in the franchise area.

One last comment, Mr. Chairman. I wish to deal with the rented citizen, mentioned by the distinguished mayor of Seattle.

What is the rented citizen? The rented citizen is a hired gun. We see this when a cable TV operator comes into a city and hires as a "citizen." Now I am not against the American spirit of entrepreneurism, capitalism, and I understand well a giant cable TV operator seeking out a well-known and well-liked citizen and making that citizen a minor partner in the cable operator's application to the local government.

I would, however, serve notice upon rented citizens that the lease does not last always, and once you have been used up and the franchise is won and you discover that you are not a part of the policy-setting procedure and the complaints start coming in against the franchise operator because of this or that thing not done as citizens expect and they begin to remember you as the cable operators rented citizen who lives next door. And why be a rented citizen when you can be an owner and rent somebody else?

And, Mr. Chairman, this is where minorities need to be, your committee will give encouragement to this, and again let me repeat, if one wants to consider minorities, just consider it not as a handout to anybody but a sharing. Because only in sharing of power are we going to have a whole America.

Thank you very much, Mr. Chairman.

[Mr. Sutton's prepared statement and attachments follow:]

PREPARED STATEMENT OF PERCY E. SUTTON, CHAIRMAN, INNER CITY BROADCASTING CORP.

I want to thank the Honorable Parren J. Mitchell and members of the subcommittee on SBA and SBIC Authority, Minority Enterprises for inviting me to offer testimony here this morning.

I suggest to you now, as I have stated to the many audiences before which I have appeared in the course of attempting to secure a cable TV franchise for the borough of Queens, in the city of New York, either there will be a mass of great bankruptcies in this country of high powered entertainment, motion pictures, newspaper, and broadcast companies that have entered the cable TV field in the last few years, or, through the wiring of the urban centers, the cable industry will finally realize its much-promised and long awaited potential.

If we are to accept the industry's own press, the urban markets will become the "promised land" complete with two way/interactive television; systems of 80 to 100 or more channels; fascinating programs ranging from remedial education and foreign language channels to channels for learning the science of space. And, there will be sports channels for the watching of the 1982 welterweight fight between Leonard and Hearns, as well as channels for their respective 1983 middleweight challenges.

To me, it is no longer a question of whether cable television will be that which we expected 15 years ago; I now take this for granted; the issue is: is there a place for small business people and independents in the cable TV industry in the ownership of cable franchises? The answer is a resounding "yes".

While the crumbs from the table will fall off or be fed to small independent persons, minority or otherwise, through allocation of slices of the pie in the form of service and supply efforts allied to the construction, maintenance, and operation of cable TV systems, the assignment of the ancillary benefits of industry growth to "small" businesses has always been accepted. But, what ought to be very important to this committee, is the search for formulae by which small business persons and minorities will be able to earn meaningful participation in the direct benefits of the new wave of urban franchising through majority ownership and control of cable TV systems.

A principal problem in cable TV franchising is that in recent years many giant companies have entered the field of cable television franchising and ownership, changing what was always seen as a "local" business into a national "delivery" service.

These new companies have come with their big dollars and established reputations in other fields, and have been successful in developing a pattern of public thought that suggests that somehow control of a cable TV system within a city by the grant of a single franchise is somehow superior to the existence of competing but compatible franchises.

It is very interesting to note that when all cable markets were small, and most cable companies were "small businesses" seldom was the issue raised that "multiple franchises won't work". However, as the stakes were raised with the attendant growth in profits, a "clubby" attitude set in. Small cable TV systems were discouraged. The industry witnessed the irony of companies on the one hand promising interconnection between cities, counties, and states, and promising the moon, while on the other hand arguing against multiple franchises within the municipality by implying that interconnection between franchises within a city or county was not an efficient way to operate a cable TV system.

What we are seeing today is that some giant cable TV companies and sadly, also some large cable TV consulting firms have become "blinded" by the light of monopolistic control and its potential for vast profits. This condition has led to statements such as "a single franchise is the best way to gain speedy wiring of the city." Or "only a single operator can provide one standard of TV fare as well as other cable services."

What about the much touted technological advances? Aren't they available to any system operator with the ability and desire to deliver? Therefore, if the franchising authority required interconnection and synchronized construction schedules, wouldn't the cable operators comply—big or small?

This new cable philosphy of monopoly is strange and unfounded, and is encouraged by those who would deny small business persons opportunity. And its effect is especially felt by minorities who populate the inner cities and consume the cable TV product, but don't own the producer because minorities have had a history of absence of access to capital and absense of opportunities to share in meaningful ownership of cable TV franchises; many of these franchises now being granted in our cities will have a billion dollar price tag in 5 to 10 years. This is awesome economic power, with a significant absence of minority control.

Cable television franchising has political aspects as well as economic ones. Other speakers will call to your attention that the right to grant a franchise to use the streets and sidewalks of a city, village or municipality, rests with that municipality itself. These grants of rights to operate are made by municipal officials such as commissioners, councilpersons, aldermen, or in some instances, the major or other chief executives.

To insulate themselves from the down side of a bad political decision and suspicious thoughts on the part of voters and citizens, many municipalities have hired cable TV consultants to evaluate the technical, administrative, financial, and other aspects of the various proposals made by cable TV franchise applicants, and to even on occasion rate those applicants so as to deliver to the municipal government officials proposed applicants as, "the best of the lot."

This use of cable TV consultants may be good for insulating municipal officials from citizen's criticism but is it good for the citizens?

The process of reliance upon consultants to virtually decide the value of a franchisee's application may be good or bad depending upon the experience or political philosophy of the consultant, and the degree to which constant contract with the same "MSOs" affects the consultants ability to render an unbiased report.

It is my strong belief that no municipal official should avoid the hard decisions of saying yes or no, to a franchise applicant. Every public official with authority to approve a cable TV franchise should be deeply involved in the examination of every aspect of a cable TV applicant's proposed franchise.

For 11 years I had the opportunity to have that deep involvement as I reviewed the arguments, observed the maintenance, heard the cries, saw the progress or the absence thereof, and heard promises made and promises not kept; and in this course of things I, by studious application, learned intimately the technology, the possibilities, and the problems of cable TV construction and operation.

It is against this background that more than two years ago, my company, Inner City Broadcasting Corporation, in its collective judgement, made a firm decision as broadcasters, to enter the field of cable television. And, after making certain commitments to investment in other people's cable TV systems, we made our own application for a cable TV franchise in Queens County, New York, and are now awaiting a decision on that application.

We are now considering joint ventures with local citizens in other cities that are yet unwired and uncommitted. These cities are included within the 40 or more yet to be wired cities which are on the sheet which we have attached to our presentation.

A joint venture, as proposed by Inner City Broadcasting differs greatly from "renting a citizen," as has been the practice by some franchisers as they have sought to gain the right to wire all, or portions, of various towns and cities.

By "renting a citizen" I mean the granting of a monetary benefit to a citizen, or a share in the equity of the franchise to a citizen, in return for that citizen lending his or her prestige to the cable TV applicant during the franchise application period. The purpose is to secure the political clout necessary to gain for an otherwise qualified franchisee the right to a franchise in a particular municipality.

We know of no instance where a "rented citizen" has gained more than a 5 to 10 percent interest in a system. Nor has that "rented citizen" ever been placed in a policy making position within the company, once that franchise was garnered by the company. And, I suspect, that down the road there will be a number of embarrassed "rented citizens." As they discover how unimportant they are in the power of the company as it responds to their fellow citizens. When complaints come in about that company's delivery of cable TV services, I fear they will find that as "rented citizens" their lease has run out and that all they will have left is the payments yet due them on the period of rental.

On the other hand, what I am proposing by a joint venture, is a meaningful, equitable relationship between our company, and any other company, and local citizens: to have such local citizens directly participate in control of the franchise, either by ownership of a majority of the shares or by voting trust with meaningful participation and actual control in policy making decisions, including delivery of the cable TV services and controlling the profits, if there is to be such income, which will accrue to the local franchise owners.

In this respect, it should be remembered that the so-called giants of the cable TV industry, except for Teleprompter and Cox, are primarily companies that have acquired their bigness by acquisitions; this is buying out small and medium size owners of cable TV systems. These so called giants have not constructed and operated the kind of giant cable TV systems that have recently been authorized in cities such as Dallas, Pittsburgh, and Boston and soon to come in New York City, Chicago, Los Angeles, Detroit, Balitmore, Cleveland, Washington D.C., etc.

With vast financial resources the so called "giants" have strung together villages, towns, and small cities by buying out the local owners with awesome sums of money and proclaiming themselves as "big" operators saying . . . "We have a million plus subscribers, how can a small cable TV operator compete with us?"

Local persons interested in ownership of cable TV systems should consider joint ventures as a process to compete with these "giants of acquisition".

More than 10,000 cable TV franchises have already been granted in America. Among these franchises only a pitiful few cable TV franchises have been granted to inner city residents or small business people. There are now less than 40 significant towns or cities to which minorities and small business people ought to look at for cable TV ownership.

What I am suggesting to you is that it would be a large mistake for small business people and minorities to ignore the ownership role in cable TV.

Minorities and small business people should pool their economic and technical resources and enter the cable TV franchising effort before it is too late.

I thank you.

[From the New York Times]

HOME SECURITY BY CABLE TV

Cable television home-security systems, a new and virtually untested use of cable television technology, are expected to become a key issue in New York's hotly contested franchises—Brooklyn, Queens, the Bronx and Staten Island.

In the two years since officials in Fort Lauderdale, Fla., required that security features be provided to users as a condition for granting cable franchises, nearly all cable companies have built into their systems a two-way capability that keeps open the option of providing home-security services.

These security systems do not use the video or audio elements of cable television systems, but allow impulses stimulated by sensors in the home to be sent via cable to a central security station, where police or fire departments can be alerted to an emergency. Two-way video capacity, which would allow a subscriber to stand in front of a camera and yell "Help," for example, is still far off.

The major bidders for the New York franchises, including Warner Amex Cable Communications Inc., Time Inc. and the Teleprompter Corporation, have covered their bets by offering this two-way technology and are studying 2,000 households in Columbus, Ohio, and 8,000 households mainly in Florida and Texas, where Warner and Tocom, a Dallas-based communications company, are operating cable home-security services.

Technology still developing

The bidders' efforts to develop home-security capability are largely self-imposed. A report on the city's cable needs, issued by the Washington law firm of Arnold & Porter and commissioned by the City Council, does not make specific recommendations regarding security, apart from setting two-way capability as a minimum requirement, because the technology is still developing very rapidly.

Carol Bellamy, president of the City Council, however, said that all bidders would probably be asked to detail their home-security capabilities before the franchise decision was made.

Though the bidders anticipate great security demand from New York subscribers, many questions—such as who will install the systems, who will monitor them and whether the people who need them most will be willing to pay $10 to $15 a month for them—have yet to be answered as the city churns slowly toward a franchise decision.

"We can only say the technology is no longer pie-in-the-sky," said Michael Botein, a New York Law School professor who studied the cable needs of the four outer boroughs for the City Council. "But if the companies had to put it in tomorrow, they'd be very hard put."

Equally uncertain is what impact the new systems will have on conventional security businesses, which complain that cable is simply repackaging what the security businesses have always been able to provide—automatic telephone dialing—but on a different set of wires.

Miklos B. Korodi, a senior vice president for development at Warner, said that the company had set up a separate subsidiary to produce security systems because the conventional security companies "are a fragmented industry; they've relied on insurance companies for leads." He added, "They haven't pursued the market with vigor and intelligence."

Unlike Warner, Tocom is not a cable television company but a security services specialist that will supply all the New York bidders except Warner, unless the bidders succeed in their efforts to develop original security systems. Tocom has made overtures to conventional security companies, such as A.D.T. in Clifton, N.J., one of the largest such concerns, to make use of their cables instead of telephone lines.

"Panic button" is supplied

Although each has distinctive features, Warner and Tocom share the same basic technology. They offer four types of alerts that can be purchased singly or in combinations: a fire alert, based on heat and smoke sensors; an intrusion alert, based on sound sensors or contact pads on windows or doors; a medical alert, usually a push button, and a "panic button" for miscellaneous distress. This last item is usually built into a small keypad, but in some experimental forms, such as that offered by Erie Cablesystems in Erie, Pa., it consists of a remote control on a medallion worn around the neck.

Impulses from these sensors or buttons travel upstream to the head end of two-way cable systems using the same channels that are simultaneously carrying television images downstream, without interfering with the downstream transmission.

[From the New York Daily News, July 29, 1981]

CABLE TV: FRANCHISE IN HASTE, REPENT AT LEISURE

(By Neal Peirce)

CAMBRIDGE, MASS.—The nation's cities and counties—after a season of intensive romancing, propagandizing and sometimes not-so-savory political manipulating by cable television companies—are belatedly starting to wake up and to drive better deals for their communities.

Cable system revenues have soared into the multi-billion dollar range. Home hook-ups, offering 35 or more channels, will likely expand from 14 to 45 million in this decade. Most of the biggest franchises will likely be granted by 1984, including such plums as Denver, New Orleans, Boston, Baltimore, Atlanta, Los Angeles, Washington and four New York City boroughs.

By virtue of their control of streets and other public rights-of-way where cable wires must be strung, cities have immense powers—to grant franchises, set programming and access conditions, regulate rates consumers must pay. But there can be just one cable company in most cities or towns, so that a franchise, once granted, is a virtual monopoly.

Unless cities develop well-defined, open and fair processes for negotiating cable franchises, warns Harold Horn, president of the Cable Television Information Center, they can "endanger the city's role, risk litigation and tend to create an environment where unethical or even illegal influence can be exerted by cable companies, city officials or influential citizens."

Horn knows whereof he speaks. Influence peddling and unsavory politicking have been rife, including the "rent-a-citizen" process in which cable firms, for free or at nominal cost, grant potentially lucrative minority ownerships to prominent local figures so that their names can be used in the bidding war before city or county councils. A former Fairfax County, Va., supervisor stands to earn millions for zero investment if the firm that borrowed his name is victorious.

Conversely, a city can do itself—and its citizens—an immense favor by going slowly, carefully checking out the pluses and minuses of every proposed deal, and maintaining a high and permanent degree of community control over cable. A prime example comes from Cambridge, where City Manager James Sullivan appointed a blue-ribbon advisory committee that spent almost a year surveying the "state of the art" across the nation.

Surveying already cabled communities across the country, the Cambridge panel found depressingly consistent reports: "If we had to do it over again, we would do it differently." "Franchises were (improperly) sold." "Service was provided on a discriminatory basis."

But competition and city demands have forced most cable franchisers to offer at least one "public access" channel.

Shining examples of cable's potential are appearing. San Diego has a full-time channel programmed and produced by elderly folk, including shut-ins highly dependent on television. In York, Pa., racial tensions between youth and police were eased by intense discussions on the access channel. Reading, Pa., has used split-screen programming for "party-line like" conversations between senior citizens, youth and city officials.

Cambridge should even consider, said the committee, owning the cable network itself. The potential payoff: lower and more affordable subscribers' fees, and a degree of continuing public involvement unprecedented in the cable industry.

But the immense up-front investments required for cable systems make significant city or community group ownership unlikely. In Boston, a city racked by ugly racial discord, a remarkable alliance of 10 economic development corporations—representing every neighborhood from fiercely Irish South Boston to black Lena Park, Chinatown to an Hispanic South End section—hoped to raise enough capital for a significant minority share in whatever cable franchise the city approves. But the system cost will be so high ($70 million) that any participation will likely be token.

Sadly, the most creative ideas for excellence in programming and greater community control have come too late for cities already locked into less-than-optimum contracts. But many more still have the choice before them. And franchises do eventually expire—typically in 15 years. The profit-hungry cable firms should be on notice that more and more cities will want deals that not only line private pockets but also insure to the broad benefits of citizens and communities.

[From the Daily News, July 28, 1981]

THE CABLES ARE COMING—AND SO ARE THE COMMERCIALS

(By Kay Gardella)

The day the cable TV industry reaches its potential the war will begin. With a projected 104 channels available to viewers, and only 24 hours in a day, the fight for audiences will look like one of those brawls that take place in a hockey game.

"Even McDonald's will have to worry," says Dick Cox, president of CBS Cable, which is being readied for launching, this October. "As more and more people stay home, not only will the cable companies be competing for time, but so, too, will restaurants, theaters and other outside-the-home entertainment forms."

When CBS Cable was formed as a cultural service neither Cox nor Jack Willis, head of programing, expected so many people to be going after the same material. "Sources have dried up," Willis says. "There's no more material left. Acquisitions are diminishing. Production centers are tapped out, including Japan and Australia. Our only solution is to go into original production."

Vying for the same upscale audience as is CBS Cable are such services as Bravo, launched last December and carried on Cablevision in Long Island and in Westchester and Bergen counties, ABC Arts, a repertory service started last April and now servicing 700 cable systems in the country, the PBS/Cable service, to be distributed nationally over the public television satellite system to PTV stations and then to cable, and the Entertainment Channel, a co-project of RCA and Rockefeller Center, which walked off with the cream of BBC's production.

All of these services are after the cultural market with symphonies, opera, dance, drama, documentaries, etc. While they're only part of the cable spectrum, they are viewed as the Renaissance of the '80s, the ground upon which the arts will begin to flower, the opportunity for the average Joe to enjoy the finest things life has to offer.

Cox hopes to have Manhattan Cable lined up as one outlet by the time Oct. 14 rolls around. Three million systems will be serviced, he said, and he has opted for an advertising-supported service, as opposed to pay-TV. While there are some in the industry who think a pay channel for the performing arts would be more profitable Cox's homework suggests otherwise. ABC Arts, too, has chosen this route as a means of surviving in the marketplace, while others like Bravo prefer to charge a fee.

The difference between ABC Arts and CBS Cable is that the first seeks institutional advertising and runs very few original products. Cox says that because of the nature of the programs on CBS Cable, commercials will not be of the 30- or 60-second variety. They'll be longer and placed at "reasonable breaks" within a program. "We want to be compatible with the editorial environment," says Charlotte Schiff Jones, head of marketing for CBS Cable.

"Budgets for programs run from $50,000 to $350,000," Cox said. "Anything higher, we usually look for a co-production deal. At least 60 percent of the programing on CBS Cable will be original production. We're also working on an innovative way to present drama to cut costs."

The programing will start at 7:30 p.m. and go to 10:30. The programs will repeat from 10:30 to 1:30 a.m., then repeat again from 1:30 a.m. to 4:30 a.m., which is primarily a service for West Coast cable systems. And there'll be another repeat the following afternoon stating at 4:30 p.m.

A host for the evening is to be selected. He will not be the sort who tells you what you're going to see, what you saw, and how you liked it. He'll make connections for people, orient them, tell viewers something about the group about to perform—"Swan Lake" at Covent Garden, for instance—and provide more content for the telecast.

After announcing a five-year series covering the history of jazz, Cox said, he had calls from virtually every cable system in the country. Other programs lined up include Bill Moyers in a 20-hour-long series, "A Walk Through the 20th Century"; "The Quiz Kids" with Norman Lear as emcee; Ralph Richardson in "Early Days"; Bernstein Conducts Beethoven," an 11-hour series with Maximillan Schell as host; "The Jack Gifford Show"; "The Life of Verdi," featuring the voices of Pavarotti, Tebaldi, Callas and Corelli; "The Songwriters"; "Singin'" with Nancy Dussault and Karen Morrow, and others.

A film presentation promoting the lineup of shows featured scenes from "Strumpet City" with Peter O'Toole, an Irish "Gone With the Wind." Willis said it won't be shown next year, primarily because of the situation in Ireland.

Major acquisitions include Dylan Thomas' "Under Milk Wood" with Richard Burton, Elizabeth Taylor and Peter O'Toole, Liv Ullmann talking about her life and the Twyla Tharp dance group. "Botanic Man," about an English professor of botany, is another series on the drawing boards and Jane Alexander is doing "Calamity Jane." And Cox said filming is now taking place at Williamstown on "Arms and the Man." "We will be shooting all over," he said.

When the arts service premieres Oct. 14 an ad will be placed in newspapers with this headline: "CBS Cable Introduces the Vast Tasteland." Let's hope, because of limited resources, it doesn't become another vast wasteland like commercial television.

[From the Washington Post, July 17, 1980]

CITIES, CABLE TV FIGHT MAY DELAY FRANCHISES

(By Merrill Brown, Washington Post Staff Writer)

A major policy flap that ultimately could delay the approval of new cable television franchises in dozens of areas across the country is brewing between the major lobbying arms of the industry and the nation's cities.

The National League of Cities is threatening to urge more than 60 of its 950 member cities to begin a "national moratorium" on ongoing and complex negotiations between municipal governments and the competing companies seeking cable outlets.

The target of the league's campaign is the National Cable Television Association, the leading industry lobbying group. The NCTA has announced its support for legislation before the Senate Commerce Committee that would deregulate many facets of cable television and, in the league's view, limit the local role in considering competing franchises.

What the League of Cities is so angry about is that officials in some cities, in addition to league officials, thought they had a working agreement with the NCTA to begin producing a new code for these lengthy and highly politicized negotiations on franchise awards. Those talks began in May—a month before the content of the Senate bill was announced—and now appear dead so long as the cable group supports the deregulation effort.

"Your city is one of more than 60 areas where major cable franchises are in some stage of local negotiation or renewal at this time," Alan Beals, executive director of the league, said in a letter prepared yesterday for city executives.

"Because we must now question the good faith of the cable industry and the sincerity of NCTA's interest in developing franchising standards that are in the public interest, the League believes cities such as yours are in a position to send a clear message to the cable television industry," the league wrote.

The threat of league advocacy of the moratorium—which Beals said in his letter is a subject being given "serious thought"—is clearly a major power play and a demonstration of the depth of the league's feelings about cable deregulation.

Among the municipalities studying cable television and preparing for franchising are Montgomery, Prince George's and Fairfax counties in suburban Washington, and Miami, Boston, Detroit and Milwaukee. Those franchises are worth millions of dollars to their potential owners and could broaden dramatically the programming available in those cities.

The legislation includes the bitterly debated provisions to deregulate many facets of the telecommunications industry and restructure the operations of American Telephone & Telegraph Co., and the NCTA-NCL fight is just as bitter. A telecommunications bill before a House committee does not include specific provisions concerning cable television deregulation.

And the response of the cable industry group was just as vitriolic as the league's threat. "It is terribly unfortunate and unfair to punish consumers for their own misinterpretation of the legislation," Thomas Wheeler, president of the NCTA, said yesterday in an interview.

"The projects we were jointly working on we intend to carry on with or without the League of Cities," Wheeler said. "The issues in the legislation are really separate from the issues in the franchising process."

The NCTA maintains that the League of Cities has misinterpreted the legislation and that the Senate bill—whose five sponsors include Howard Cannon (D-Nev.), the committee's chairman—bars rate regulation of pay television or the sale of ad or program time on cable television but maintains local regulation of basic consumer rates. Yet the legislation would prohibit a government from forcing a franchise to unilaterally provide access to government or the public.

The league, however, sees the bill differently. "Because local governments usually control the use of public streets—where cable operators must string their cables—and are the level of government closest to the people, they are the logical franchisers of cable television," Beals said in a letter to Wheeler two weeks ago.

The bill would "prohibit the requiring of local program origination and public access and the establishment of subscriber fees, and authorize the FCC to establish franchise fee ceilings," Beals wrote.

A BRIEF LOOK AT THE TECHNICAL SIDE OF SATELLITE COMMUNICATIONS FOR THE NONTECHNICAL PERSON

(An edited transcription of a presentation by Wilbur L. Pritchard, president, Satellite Systems Engineering)

INTRODUCTION

This session deals with what the main technical problems are in satellite communications. It is geared toward people who are not primarily concerned with technical aspects, but are concerned with economic-regulatory-marketing programs. It's really not possible to understand all the controversies in satellite communications without a reasonably decent feeling for the technical background.

It takes a lot of money to orbit a satellite. Usually you're talking about figures like $200 million, $300 million. Intelsat VI will probably come up to somewhere around $1.5 billion before it's finished. So you're talking about big money.

Eighty percent of all that money is concerned not with the communications aspect, but with putting the satellite in orbit and keeping it there, and with providing a comfortable, benign environment in which the communications equipment can work.

Many of the regulatory problems and many of the difficult legal problems associated with the satellite communications industry start with this end of the problem. So what I'm going to try to do is to give a technical overview, and explain the principal technical aspects, but try to avoid anything mathematical or too difficult for a person with no technical background.

BACKGROUND

There's a satellite somewhere out in orbit. It has an antenna which has a beam covering some area on the earth. The satellite can be anywhere, and the area you are communicating with we call the "coverage area."

The beauty of the satellite is that you provide yourself with an instant network to connect up all these points. Once you have a beam from the satellite, any point within this area can now communicate with any other point via the satellite.

If you want to connect any points by terrestrial methods, the obvious way would be to run a line between them. If you have 100 points, you end up with 100 x 99 lines. The number of connections gets impossibly large very quickly. The classical way to deal with that problem has been with switching. For instance, you don't have a telephone line to everyone you want to talk to. You go into a telephone exchange, or switch, as the telephone people call them.

The satellite does the same thing that the switch does. It takes away from you the necessity of making a lot of terrestrial connections.

Once you've decided what area to cover, and you've covered it, the cost of installing another location is not dependent on distance. You can keep adding points without adding extra lines. Therefore, when you have a lot of points to be connected, sooner or later the satellite will be cheaper than a terrestrial system, especially if you're starting from scratch.

We recognize that very often you're not starting from scratch, especially in the United States where there are huge existing terrestrial systems of all kinds. But there are some parts of the world without existing terrestrial systems. Indonesia, for example, was one of the first countries to have some kind of satellite system, because they had nothing to start with. And when you've got nothing, the satellite is invariably the cheaper way of doing it compared to terrestrial systems.

DESCRIPTION OF SATELLITE ORBITS

So what we're trying to accomplish is to get a satellite in orbit. The principles of accomplishing this are not too difficult to understand. If you put a weight on the end of a string and twirl it at the right speed, the string will stay tight. The tension in the string is just enough to produce that accelerated motion of moving the weight in a circle. That's the equilibrium we have with a satellite in orbit.

In the case of the satellite in orbit, we replace the string with the gravitational pull of the earth. In the simplest kind of orbit, the body simply moves in a circle. By varying the length of the string on the weight, you have to vary the speed at which you twirl it in order to maintain tension. The same thing is true with the satellite in orbit: for each distance from the earth there is a specific speed at which the satellite will move in order to keep the "string" tight.

The moon is a quarter of a million miles away, and it moves around the earth once in 27½ days. That's just the right speed to keep the moon where it is. If you recall, when we had manned flights like Gemini and Apollo, flying at a lower altitude, they typically moved around the earth in an hour and a half. If you could be right on the surface of the earth moving as a satellite in orbit, you'd take 84 minutes.

At short distances above the earth you've got the atmosphere to cope with. To stay in orbit for any length of time, a satellite has to be high enough so that the drag of the atmosphere doesn't bother it. It has to be up at least 100 or 150 miles. At that distance, the quickest orbit—or period of rotation—is about 90 minutes.

But a satellite doesn't have to orbit in a circle. It can also be in an orbit which is an ellipse. In simple terms, an ellipse is an oval.

A circle has one center. An ellipse has two points, called the foci of the ellipse. Newton showed that an ellipse was the more practical orbit for a satellite and the central body—the sun or the earth, a satellite or whatever—would have to be at a focus of the ellipse.

The ellipse is the orbit that a satellite generally has. There are, in fact, two foci to an ellipse, and if you measure the distance from the edge of the ellipse to the two points, the sum of those two distances is constant. That's actually the formal definition of an ellipse.

The earth is pictured at a focus of its elliptical orbit, not at the center. The long axis is called the "major axis"; the short axis is called the "minor axis." Two words which are extremely important are "perigee" and "apogee." At the perigee the satellite is closest to the earth, and at the apogee it is farthest away.

(Note that astronomers use different words for different kinds of satellites. For example, when they talk about planets, it's perihelion and aphelion; for the moon, it's perisynthians and aposynithians.)

We're not going to put our communications satellite in an elliptical orbit, however. We're going to put it in a circular orbit. Though there are many possible orbits for satellite comunication and almost any orbit is usable, one orbit in particular is the most convenient. That's called the "geostationary orbit" (p. 3 of notes).

We know that the satellites in low orbit took 90 minutes to orbit the earth, and the moon takes 27½ days. Somewhere in between, it takes exactly one day. If we can put a satellite up at that height, and put it in the plane of the equator, it will stay synchronized with the rotation of the earth. That's the geostationary orbit. There are other orbits used for satellite communications, but since the United States doesn't use any other kind of orbit for commercial satellite communications, I'm not going to talk about those.

In the diagram you see the earth with the north pole and the equator. Note that the geostationary orbit has to be in the plane of the equator. If you put it in some other place—inclined—it will still be synchronized with the rotation of the earth, but it will not seem to stay fixed in position relative to a point on the earth. It will seem to go up and down in the sky in a big figure 8.

To be geostationary, it must be in the plane of the equator. Unfortunately, it costs a lot of money to get it there. And remember something else about satellite orbits: you can only have a satellite orbit if the plane of the orbit—or the imaginary surface of the ellipse or circle—goes through the center of the earth.

So, to summarize, the satellite plane must go through the center of the earth. To be geostationary, it has to be in the plane of the equator. It has to be a certain height. The equivalent height in kilometers, nautical miles and statute miles is written on the diagram.

You can see a lot from that high up. The diameter of the earth is only about 4,000 miles. So it's almost 6 diameters—6 radii—away. And its coverage area from that far out is about a third of the earth.

Incidentally, for the interest of the scientifically-minded, the satellite is sometimes called—quite incorrectly—a 24-hour satellite. It doesn't take 24 hours. It takes 23 hours 56 minutes and some seconds, because it has to be synchronized with the rotation of the earth. The earth rotates around its own axis and moves around the sun, and our 24-hour day is chosen so that the sun always comes back at noon; but in the meantime we've actually moved. A satellite, however, doesn't know anything about the motion of the earth around the sun. So it has to stay synchronized with the actual rotation of the earth on its axis. This is called the siderial day.

Although the geostationary orbit is so magnificently convenient from the point of view of coverage, it is a long way up—and we have to get it there. Since that's where most of the money goes, let me explain a little bit about how we put a satellite in orbit.

PUTTING A SATELLITE IN ORBIT

In the center is the earth. Somewhere on the earth is a launch site. We want to put the satellite in orbit, represented by the large circle called the "final orbit."

We start off on the ground. In order to get in this large orbit, we divide the mission into two halves.

The first half of the mission is to get into a "parking" orbit. To do this, we first have to get the satellite off the ground and into the atmosphere, about 100 or 150 miles. (A parking orbit as low as 80 miles can be used, if you don't have to stay in it for very long.) The second half of the mission is to transfer from you parking orbit to your final orbit. Let's examine the two halves separately.

How do we get into parking orbit? Basically, we fly there. We use a launch vehicle like a Saturn V or an Atlas or the Shuttle. They are all jet aircraft, and they're practically all fuel—maybe 80-90 percent fuel. So you're not going to get much payload. The aircraft doesn't have much in the way of wings. If you don't have any wings, it is easy to fly straight up.

So what we do is start off with these huge jet engines which go straight up. Then when they pick up a little bit of speed they start to turn over. They go faster and faster all the time, because they have this huge thrust of these jet engines. and because they're getting rid of weight all the time. The aircraft get lighter and lighter as it burns hundreds of gallons of fuel a second. So not only is the speed increasing, the acceleration is also increasing.

Then it gets fast enough so there's a little lift from the atmosphere and a little centrifugal force, so it can bend over a little more. The faster it goes, the more it turns over, until it's flying closer and closer to horizontal.

As it gets higher, the centrifugal force gets greater and greater, the atmosphere disappears, and it finally gets into that equilibrium. It's an aerodynamic mission: it flies all the way, until it finally gets into a low orbit. The engines are burning all the time. When they turn the engines off on a launch vehicle, they're there. And most of the fuel they started with—and therefore most of the weight they started with—is gone. This is the first part of the flight—called "powered" or "aerodynamic" flight. And now they're in parking orbit.

Now you've got equilibrium—you're the weight on the end of the string. You want to get from this parking orbit into the final orbit, which is a much bigger circle, and may not even be in the same plane.

Cape Canaveral is about 28° latitude north of the equator. If you imagine a plane sliced through the center of the earth at Cape Canaveral, it's inclined 28° from the plane of the equator. So the natural orbit to fly into is one that is inclined 28°, the latitude of the launch site. But as I said before, for us to have a geostationary orbit, it must be in the plane of the equator.

So we have two problems here: we have to get from the small circle to the big one, and we have to get into the plane of the equator.

To get from the small circle to the big one is very easy. What we do is to increase the speed of whatever we have left after reaching parking orbit—let's call it the satellite. If you increase the speed of something that's in orbit, you can't stay in the same circle. I want to emphasize that: each size circle has its own speed. So if you go faster, you will not stay in that same circular orbit. You will go into an ellipse.

If you increase the speed enough, you go into a big elliptical transfer orbit. If you increase the speed enough, the height of this transfer orbit will end up being just where you want your final orbit to be. So you increase the speed amount of perigee so that your altitude is the altitude of the final orbit.

If you get launched on the Shuttle, it takes you up to parking orbit and throws you over the side. You're jettisoned. That's it. You are now in a 160-mile parking orbit, and you're 28½° inclination. You're on your own, and you've got to get from that parking orbit to final orbit under your own power.

You increase your speed the amount of perigee so your altitude is the altitude of the final orbit. To do this, you turn on one of your engines called the "perigee kick engine," and give yourself a perigee kick. The kick has to be just long enough. It's not like the trip from the earth to the parking orbit where you have the engines on all the time. You turn the engine on for a few minutes to give yourself enough speed to get the height you need.

Once you reach the needed height, if you don't do anything else you will just turn right around and come back down. If you just give it this one kick, you'll be in a big elliptical transfer orbit.

Of course, sometimes they leave it in transfer orbit for quite a while. Why would you leave a satellite in transfer orbit? There are a couple of reasons. One is that the earth keeps turning underneath it all the time. The transfer orbit has a period of about 12 or 13 hours. And this may be convenient.

When you decide you want to go into your final orbit, you have to turn another engine on again. You may just restart the same engine, or it may be a completely different engine. This is called the apogee kick, and the engine involved is called the AKM, or the "apogee kick motor." In the history of launch vehicles, it's been the most dangerous of all. More launches have failed at apogee kick firing than from any other single problem.

Again, you use a great deal of fuel. And you give yourself enough extra speed here so you can be in equilibrium in the big circle, or final orbit.

If you put 1,000 pounds in orbit, you'd be lucky to have 200 pounds in final orbit. The rest is burned as fuel, for the perigee kick and the apogee kick.

The apogee kick has one more thing to do. You have to change the orientation of your orbit. In the diagram at the bottom of the notes, you see the synchronous orbit which is the direction of the equator, the velocity that you need. But you actually come up at a different angle, at an angle which is equal to your latitude, 28½°. So you not only have to give it extra speed, you've got to change its direction as well.

You have to orient the satellite in the right direction so when you give it the extra speed you'll also change its direction into the plane of the equator. That's a very tricky operation which must be done with great care. And sometimes they let it come to 2 or 3 transfer orbits in order to take measurements so they know what the best point is to go into final orbit. If the satellite does get off in the wrong direction, there are other engines on board to correct the error.

Let me emphasize how much is lost here. Between perigee and apogee you probably don't get much more than one-sixth of the weight that you put into parking orbit. On the Shuttle, NASA doesn't charge you the weight of your spacecraft; they will charge you according to what you put into the Shuttle, which may be five or six times more than will actually go into orbit.

WHAT GOES INTO A SATELLITE

We've been talking about this spacecraft, or satellite. But what do we really want to have in orbit? We want communications systems, consisting of transponders and antennas. But we need more than that.

First, we need a structure to hold everything together. We need to supply power, since we can't plug it into the wall. We need attitude control, to keep the antennas pointing at the ground. We need to keep the solar energy source pointing at the sun. We need a way to regulate the temperature. And we also need telemetry, tracking and command, and propulsion. I'll discuss each of these separately.

The structure is needed to provide a benign atmosphere for your payload. It has to withstand the launch: the vibration, acceleration, shock, aerodynamic loads caused when it's getting out of the atmosphere. You're going at very high speeds through the atmosphere, and the payload has to be protected.

In orbit you have other forces, such as centrifugal force and thrust, that the structure has to withstand. The big trouble, though, is during your launch. If you survive the launch, the structure is usually okay.

The primary power is a really interesting subject. There are only two ways of getting power to a satellite: solar energy and nuclear energy. Nuclear energy has not been used at all in commercial satellites. The fuels that are relatively safe are hopelessly expensive; and the fuels that are cheap are hopelessly dangerous. So nuclear supplies have only been used for deep space missions, and for certain kinds of military.

So in this discussion, we'll just talk about solar energy. The trouble with solar energy is that of the eclipse. Solar energy is abundant and cheap: 138 milliwatts per square centimeter. To give you a feeling for how big that is, if you could gather only 10° in a square only a few hundred miles in each direction, you'd have enough energy to give every man woman and child on earth. But in using solar energy, the eclipse is not only a nuisance, it has a lot of regulatory implications.

In the diagram of the notes, you see the earth with a satellite in orbit around it. The fact that the earth and the satellite are rotating together does not keep the earth from casting a shadow when the satellite comes behind the earth.

In the lower diagram you see the same thing from a different angle. During the summer, the sun appears to be above the earth at the north pole, and in the winter it appears to be below the earth at the south. This is due to the tilt of the earth's axis.

But around March 21 and September 21, there are two eclipse seasons lasting for several weeks each. During the eclipse, there has to be another means for supplying power to the satellite. What you need is a battery that can charge up in less than a day, and last for the 70 minutes maximum time of the eclipse.

The batteries are very expensive, and very heavy. None of them are really satisfactory. Battery technology is the worst part of modern society. You can have some hundreds of pounds of batteries, and when you put batteries up you also need extra solar cells to charge them. This is because during the daylight you've got to operate everything in the satellite, as well as charge the batteries; and you can't steal power from the payload to charge the batteries.

Because you need extra solar cells, and a lot of electronics to control everything and operate the satellite, you also need more fuel to keep the satellite in position. You need more perigee motors and more apogee motors. The chain reaction costs a lot of money. When you add batteries to a satellite, you add millions of dollars to the cost.

You might ask the question, do you really need the batteries? You certainly need batteries to take care of the housekeeping aspects. There are a lot of things on a satellite that you never want to turn off. But do you really need the batteries to operate the transmitters and receivers?

It depends on what time the eclipse is. If you look at the picture, you can tell roughly at what time the eclipse will be.

If you are right below the satellite. and you are in shadow—at local midnight—you are in the heart of the eclipse world. Since the earth is rotating and the satellite is rotating, the beginning of the eclipse would be 35 minutes before local midnight and extend 35 minutes after.

Also, you must remember that the clock doesn't keep sun time. The clock averages out over the year, and counts for the revolution around the sun. For example, in March the sun could be another 8 minutes away from you. So now you've got 35 minutes plus another 8 minutes. Also, you might not be right below the satellite; you may be considerably to the east or west of the satellite.

Then you have our time zones. Even though Washington, DC and Richmond, VA have the same clock time, they don't have the same sun time. And they certainly don't have the same time in Cleveland, OH. So if you're in a particular time zone, that eclipse could come at half past 10 clock time, instead of at midnight.

Suppose you're talking about a broadcast television satellite. What time would you like that eclipse to be? At half past 10 in the evening? If you're not carrying batteries, you'd be off the air during prime time. So you'd like to get the eclipse later.

How do you get the eclipse later? You move the satellite to the west of the part of the country that you're trying to reach. You get about 25° to the west, and you can get the eclipse to come at 1 o'clock in the morning.

When the satellite is right overhead, the earth station is looking straight up at it. As you move away, the angle goes down. At first it doesn't make much difference. As you look down at very low angles, however, you're going to run into the building next door. But even before that happens, you're going to get a longer and longer path of signal.

So you have to remain within the preferred longitude for a satellite signal. You want to be far enough to the west so you have what the broadcast satellite people call "eclipse protection," but you don't want it to be so far that the angle of elevation gets too low.

Now let me say a few words about attitude control. You have to do two things with your satellite. You have to keep your antennas pointing at the earth and your solar cells pointing at the sun. There are basically two ways of doing this.

First, you can spin the whole satellite like a top. If you do that, you have to do something about unspinning the antennas, since you have to keep them pointing at the earth. To do that, you spin the satellite in one direction and the antennas in another. It's not too difficult if you only have one antenna. But it gets complicated when you've got six. You have to put all the antennas on a platform and spin the outer part of the satellite one way and the inner part another way.

The second way is to spin a big gyroscope inside the satellite and keep the outside of the satellite fixed. You put solar panels and antennas on it. It's a little bit simpler, but there are lots of pros and cons, and a lot of technical discussion going on. In general, the bigger the satellite, the greater the argument for using a body stabilizer. The question is, what's bigger and what's smaller. It used to be they thought above a few hundred pounds you'd be better off with a body stabilizer. Now it's a few thousand.

As the solar cells get better and the Shuttle permits bigger vehicles, this tends to make the spinning satellite more competitive with the body stabilizer. But they're all complicated. You can't control your attitude without knowing what you're looking at. So the satellite has to have sensors to look at the earth and the sun so you know what you're doing.

Satellites also need thrusters to correct big errors and to change the orientation. So all attitude control systems have little jet engines, and they all have a lot of electronics. It's a very complicated system, and it's one of the systems in the satellite that has the greatest possibility of something going wrong.

You also have thermal problems in the satellite that are worth mentioning. The satellite absorbs heat from the sun and it absorbs heat from the earth. It also generates heat internally with its electronics and with the thrusters. When you turn those little jet engines on, it can get pretty hot. There's only one way for it to cool: by radiation from outer space.

The satellite radiates heat. Fortunately, as the temperature of the satellite increases, it radiates more heat very rapidly, until it reaches an equilibrium where all the heat which is absorbed and generated is in exact equilibrium to that which is radiated. The temperature will go up until it gets to an equilibrium.

But you have to worry not only about the equilibrium of the whole satellite, but all the local temperatures as well. The transmitters mustn't get too hot, or the batteries too cold, etc. The many local temperatures within the satellite have to be watched very carefully. And it's quite a shock to the satellite when it goes in and out of eclipse. When it goes into eclipse, all of a sudden there's no solar energy, and it starts to cool down rapidly. So you have to design the thermal systems for both in and out of eclipse. That's one of the major problems in taking care of equipment. It doesn't do you any good to have a good equilibrium temperature for the satellite if something gets too hot or too cold locally.

You've got to know what's happening in your satellite: what the temperatures are, what the voltages are, how much fuel you've got, which switches are in what position, etc. And that's called telemetry, tracking and command.

You've got to know where the satellite is positioned, how far away it is, how fast it's going. You've got to be able to give commands: to turn the thrusters on and off, close a switch, open a switch, make adjustments. And all these operations must be performed from the ground.

There's one more system: the propulsion system. We've already seen that you have to give yourself a large increase in speed at perigee of a transfer orbit, if that's the kind of launch vehicle you went with. At the very least, you're going to have to give yourself a big kick at apogee. And it's rather a shame to have to include these engines in the satellite, because you only use them once and then you're finished with them. But you've got to put them on board.

We already had the picture of the geostationary orbit. However, there are a couple of errors in that simplified drawing. First, we don't have a two-body system; we don't have just the earth and the satellite. We also have the sun and the moon.

The effect of the sun and the moon is that neither one is on the plane of the earth's equator. So there's a little gravitational pull from the moon and a little gravitational pull from the sun. That tends to pull the satellite away from the equitorial plane in an amount equal to about ½° to 1° per year. It's not much, but if you're trying to keep your satellite in position, that pull must be corrected.

The way these effects are described is by how much of a change in velocity you have to give the satellite in order to correct for the sun and the moon. To correct for both sun and moon, you have to allow about 50 meters a second increase—or 150 feet a second—per year.

The earth is, of course, far from round. It bulges very badly at the equator, though this doesn't affect an equatorial satellite very much. But in addition, the equator itself isn't very round. They've known about the bulging earth for several hundred years, but they didn't find that the equator isn't round until they started sending up satellites in 1958.

If you're trying to keep the satellite on a certain longitude, it takes a little extra fuel to correct for the bulge. It's much less than the sun and moon correction, but it's not negligible. If you need 50 meters a second for the sun and moon, you might need 5 meters for the non-circular equator. But you've got to have it—every year. And if you want a satellite to last 10 years, for example you need 10 times as much fuel.

The amount of fuel you need depends on how much the satellite weighs without the fuel. As you add batteries, which need some solar cells to charge them, you have to add more fuel to keep the satellite in position.

Finally, you need a little attitude control. Very often you use the same jets for attitude control as for station keeping, sometimes called the P & O System, or the Propulsion and Orientation System. You use the same small jets to trim the orientation or attitude of the satellite, and also to correct for the effects of the sun and moon, the bulge of the earth, and the non-circular equator.

COMMUNICATING BY SATELLITE

We've seen what it takes to get a satellite in orbit and keep it there. Now let's talk a little bit about the communications aspect.

If we connect an earth station to a satellite to another earth station, we call the way from A through the satellite down to B a channel. If it's a telephone conversation, you need two channels: one in each direction. You call those two channels a circuit. And then finally, we call the connection from the earth station to the satellite a half circuit.

If it's only a telephone conversation, then the number of channels is equal to the number of half circuits, everything is always two to one, and life is very simple. But as you get more and more data transmission, television, etc., these three numbers will be different.

A channel should be a one-way connection, a circuit is a two-way connection, and a half circuit is a connection to and from the satellite. Most charges for satellite use are based on half circuits. You pay for your own connection to and from the satellite. The person receiving your transmission will take care of his own cost.

What do we find in a satellite, and what do we find in an earth station? These are the two basic elements.

First of all, a satellite will have a receiving antenna and a low-noise amplifier.

Let me say just a word about noise for those who aren't communications engineers. Electricity is really not a continuous flow. As currents get smaller and smaller, you begin to notice that it isn't really a smooth flow but one electron after another. Some are moving faster and some are moving slower. If you lay a piece of wire on the table and you have a sensitive enough instrument, you can measure the amount of voltage going through, which is the noise voltage generated by the random motion of the electrons in that piece of wire. That's what's called the thermal noise. The hotter the wire is, the more noise it generates, and this is an irreducible noise: you cannot go below that noise level.

If you know what the temperature of the wire is, you know exactly what the noise is. The noise depends on more than the temperature, however. It also depends on the bandwidth. The quicker you want to transmit information the wider the bandwidth, the more noise you have. We characterize the performance of systems by an equivalent temperature called the "noise temperature."

When they say this is a 50° receiver or a 500° system, what they mean is that if you replace everything with just a resistor, or a piece of wire, and heat that wire until you got the same noise as you have in your system, that's the equivalent noise temperature. It should count all sources of noise in the receiver: noise from outer space, noise generated in your own wire, noise in your amplifier.

Since you want all your components to have as little noise as possible, you start with a low-noise amplifier.

Satellite receivers generally receive on one frequency and transmit on another. Usually they receive at the higher frequency and transmit down to earth at the lower frequency, because the atmospheric effects are more at the lower frequency.

Finally, you have the driver amplifier. After you change frequency with a mixer and oscillator combination, you're now at a lower frequency and you have to build the level up again so it's high enough to drive a high-powered amplifier to send the signal back to the ground.

These are the elements of a satellite repeater. This is only one radio frequency channel. Each satellite can have 30 or 40 channels, and all kinds of switches and antennas.

An earth station generally uses the same antenna for transmitting and receiving—*if* it is going to both transmit and receive. Many earth stations only receive, and some only transmit.

Again on the receive chain, you've got to have a low-noise amplifier. You're going to be receiving at a very high frequency, so you have to use a down-converter to bring the frequency down to a convenient level to receive. You've got to extract your original signal from the radio frequency carrying it, and to do that you use the demodulator.

After you extract your signal, you have to make connections to your terrestrial circuits. There may not be need of much of a connection, as your earth station might be right there. On the other hand, you might have to transmit the signal to a place a hundred miles away. Then you need some kind of interface with the terrestrial system.

Similarly, on the uplink, you have to receive the terrestrial circuit, whatever it may be and from wherever you've getting it. You cannot transmit your television signal or your telephone signal directly up. You must modulate to a very high frequency, what is called the "carrier frequency."

So you first modulate a low carrier frequency, then you up-convert to a higher frequency, through a high-powered amplifier, and out your antenna.

All earth stations in general have this kind of station diagram. However, there may be many modulators and carriers, up-converters and down-converters. There could be 15 or 20 of these in a big commercial telephone earth station.

The beauty of the satellite is its geometric advantage—you can connect up every point in the coverage area. But you must design a satellite system in which that is possible: you must have a system in which many earth stations can use the satellite simultaneously. This aspect of a satellite system is called "multiple access".

There are basically two ways in which we supply multiple access. One is to give each earth station its own carrier frequency. If you have 20 earth stations, each one would transmit on a slightly different frequency. That means that if another earth station wants to receive, it has to supply a receiver at each one of those frequencies.

So instead of having one chain, it may have 10. This is the most common and simplest way of providing multiple access.

But there is a serious loss in the capacity in the total number of telephone channels you can get if you put more than one frequency into a transponder at once. They interfere with each other. They call that effect intermodulation.

You can transmit one carrier frequency through a transponder and multiplex a thousand telephone channels on it. But if you put two carrier frequencies on it, you can't put 500 channels on each one; perhaps only 350. So as you put more and more carrier frequencies in a satellite, the total number of channels goes down because of this effect called intermodulation. And it's a big effect. If you're charging by the channel, when you drop the total capacity of your transponder in half by using many different carrier frequencies, that's quite a loss of revenue.

So although this system of multiple access is very simple, and it's consistent with the multiplexing systems used on the ground, it's not the best way from the point of view of getting a lot of satellite capacity.

On each carrier frequency they may also multiplex many telephone channels using the conventional terrestrial multiplexing systems. With small stations you sometimes take every telephone channel and put it on a separate carrier frequency. That's called single-channel-to-carrier, and it's really a kind of frequency division.

The alternative to frequency division multiple access (FDMA) is that instead of giving each satellite its own transmitting frequency, you give it its own "burst" of time. You let all earth stations use the same carrier frequency, but not transmit simultaneously. While they're not transmitting, they're still gathering and storing up information. Then when their time comes to transmit, all the stored information will be sent out at an incredible speed. Time division, 20 or 30 years from now, will probably be standard with all the world's big telephone systems.

There are a couple of other systems, which I'll only mention. Sometimes you hear people talk about space division, or multiple beam. That's not really multiple access, as you're not really using the same transponder at the same time. I just mention it to let you know that some writers refer to space division multiple access, but I believe that is semantically incorrect.

There's something else the military people call code division. In code division, everyone transmits on the same frequency, and at the same time. Each person codes his transmission in a different way. By coding your transmission, you can extract your signal from all the other transmitters because you have prearranged codes and each station uses its own code. So instead of having an assigned frequency or an assigned period of time, you have an assigned code. This is used in military systems only. It's not very efficient, but it works.

PROBLEMS

The electromagnetic transmissions of satellites in orbit will interfere with each other if the satellites get too close to each other. Because of this, there can only be a limited number of satellites in orbit. Satellites are presently orbited 4° apart (1°=7-800 miles). The FCC is talking about reducing spacing between satellites to 3°. This would allow more satellites to be orbited, and would alleviate the present lack of sufficient transponders to cover everyone who wants access to satellite transmission.

Satellites also need to be designed to tolerate more interference. Though this would increase the costs, it would also increase the revenue.

MISCELLANEOUS

The notes contain charts giving comparative information on various satellites in orbit. You'll note that the size, power, and number of circuits per satellite have been steadily increasing over the years.

The performance of a satellite system is judged by the rate of information flow and how large the coverage area is on the ground. This depends not on frequency or altitude of the satellite, but on how powerful your transmitter is, how large your ground antenna is, and how much noise you have in your receiver. If you can increase your power and the size of your ground antenna, and reduce the noise level in your receiver, your performance level will be greatly improved.

CLOSING

This should give you a basic overview of the technical side of satellite communications. It is, of course, much more detailed and involved than this short discussion can cover. But you should have a better understanding of some of the problems and costs of orbiting a commercial communications satellite, and an idea of some of the controversies involved in satellite communication.

Mr. MITCHELL. Mr. Sutton, thank you very much.

You have succeeded. You have gotten access to the capital to set up a good and thriving business. You are in control. And that is all very encouraging.

I just have some concerns about whether your counterparts would be able to get the same access to capital that you got.

Mr. SUTTON. Mr. Chairman, let me answer that. When I mentioned $300 million, if you remember, I went swiftly to the fact that the bankers were not giving it to us; they saw us as a good investment area. I am suggesting to you, sir, that there are counterparts to us. Maybe not counterparts as persons who have had as much experience in cable television as we have had, but there are counterparts.

Let me casually say to each of you as members here, one of your former colleagues, a Congressman, heads a giant pharmaceutical company, one of your former colleagues went from the Congress of the United States, to be a member of the Cabinet, and now heads a giant pharmaceutical company.

When I talk to my colleagues who are still in Government I tell them if you can survive your difficult years under Government pressure and are a good administrator, and know how to relate to people, you do not have any idea how smart you are. To run a cable TV system or a radio business you need your experience, your ability and an opportunity. You are especially well qualified for success.

Mr. Chairman, there are many bright minority people who can gain access to capital. One of the problems is the amount of the capital needed in cable TV and it would be a lot easier for the minority if it is decided that there will be multiple franchises in a municipality as less money will be needed.

The sum of $100 million is easier to get than $300 million and $30 million is easier to get than $100 million; $10 million is easier to get than $100 million. My point is that money benefits come to a minorities chances in having multiple franchises within a city.

Yes, there are a number of people who can do what we do, not just us.

Mr. MITCHELL. One more question. What do you see as the business opportunities in the software aspects of cable?

We have just heard here testimony where it appears—suggested that there is an interlocking between the corporations, the big guys who are buying up cable and the big suppliers of programing, and that would, in my opinion, tend to preclude small and minority businesses from even the software aspect. What are the opportunities there for small businesses and/or minority businesses? In programing, et cetera.

Mr. SUTTON. Mr. Chairman, I am glad that you mentioned the big boys are buying up, because most of the giants that we know of today did not construct their system. But they bought systems 30,000 here, 20,000 there, 8,000 there, and so now they say, "We are giants."

Cox again, Teleprompter, and a couple of others, did actually construct many of the systems which they own, but in main most of them own by acquisition.

You ask what are the possibilities in programing. Let me say to you sir, that in the field of cable television I think you have a hungry tiger out there ready to devour a variety of programing. And that programing will sometimes be good and sometimes bad. But I think there are marvelous, multiple opportunities for minorities in the field of production as it is termed the software for cable television.

Mr. MITCHELL. But not if you have a single franchise.

Mr. SUTTON. It is not nearly as easy with single franchises. Let me just ask you this. Why would a giant need to buy from a minority. Oh, they will give a minority token programing production contracts but in the main they will produce much of their programing in-house.

I think the more franchises there are the better for the program producers who are minorities.

Mr. MITCHELL. Thank you.

Congressman McDade.

Mr. MCDADE. Thank you, Mr. Chairman.

Mr. Sutton, we welcome you for coming before the subcommittee and we appreciate your testimony both as someone who has a long history in public life and as an entrepreneur in the industry that you represent.

Mr. SUTTON. Thank you, sir.

Mr. MCDADE. Let me see if I understand what you are saying. What you want to do as someone who has that dual experience is to keep the control of the awarding of franchises within local governmental jurisdiction.

Mr. SUTTON. Yes; I favor that.

Mr. MCDADE. And in some way try to have the local government, either through its own decisionmaking process, or perhaps better still, through passage of an ordinance, guarantee a competitive situation with some kind of a cap on the number of homes one can have as subscribers? Is that what you are telling me?

Mr. SUTTON. Yes, I am saying that I had not considered until State Representative Young of Mississippi was chatting with me this morning, I had not considered there being a cap on the number.

But what I was thinking of, is not anything ridiculous, such as dividing a city of less than 1 million homes into 10 different parts so that it might not be economically feasible. What I am suggesting is that where there are cities; and many cities are capable of being divided, it will create competition. There is no problem with interconnecting; that is, between franchise owner A over here and franchise owner B here, and franchise owner C there, and owner D there.

I do have some limits. I think the minimum size for division of a city into multiple franchises from my perspective, ought to be 50,000 houses passed, in each franchise area.

But there is no question in my mind that you would improve rather than depreciate the franchise's performance.

And let me say another thing. You are in politics. I would be frightened to death about a single franchise. I would not want to deliver to a single-franchise operator my political future.

I am now out of politics and I do not ever expect to return. There is a time to come and a time to go. It was my time to go. Really I was forced out I should tell you. I ran for higher office and I lost.

But what you are doing is granting to a single cable television operator your political destiny. Cable television in the years ahead is the information center; it is the political center. Remember what you are doing, you are delivering over to me or to another franchise operator 20 and 30 cable television channels to control. It is like having 20 or 30 ABC's or CBS's. You would give that to ABC or CBS. And cable television operators do not have to grant equal time or any of the other things required by the FCC as to broadcast television.

Mr. McDade. You indicate that there ought to be a minimal size of at least 50,000. Would that be your recommendation?

Mr. Sutton. Yes; I suggest that.

Mr. McDade. For economic purposes, as a benchmark?

Mr. Sutton. Yes.

Mr. McDade. As a starting point?

Mr. Sutton. Yes.

Mr. McDade. And you see no problems based on your experience in the industry with interconnecting the systems so that they can, if they wish to, provide a commonality of programing?

Mr. Sutton. When you say experience in the industry, I have not been all over the country. I am an assiduous reader; I attend conferences; I think I am knowledgeable in the industry. Yes; I see no serious technical problems. It is a political problem.

Mr. McDade. What about the question of length of franchises? Is there any guidance you would like to give the subcommittee about what a municipality should offer in this regard?

Mr. Sutton. Now my bankers will be terribly disturbed about this. I happen to be one of those persons in broadcasting who is not for deregulation. We are renegades, I suppose because we think the people ought to have an opportunity to review our broadcast franchise at all times. And although it would be difficult to finance them, I would have franchises reviewed every 10 years.

But I do not want to actually propose that because our bankers might take our money away from us.

Mr. McDade. We do not want you to lose your money. But for purposes of discussion, in trying to establish some benchmarks, you would have in competition, in establishing competition, about 50,000 homes, minimum? About a 10-year minimum franchise guarantee for the individual who got the franchise?

What about this question of public service requirement?

Mr. Sutton. Well, yes.

Mr. McDade. Would you include such a requirement?

Mr. Sutton. The manner in which public services shall be required, and will be increasingly required as competition heats up, many things will be done, for example, in Boston franchising that were not done as to other franchises, and some of the franchises will require—a city will grant a franchise and will say, "You will be required to maintain such public service here in X city and give to X city whatever public access and public services here as you subsequently give to Y city."

Now, X city may not require that there be public programing. Then Y city may require it. A later franchise contract with X city will trigger the same benefits. Are you with me?

Mr. McDade. Yes.

Mr. Sutton. All right. The manner in which public access or public service benefits are required is not through the FCC, but through the contractual relationship that is developed between the franchisee and the municipality. It ought to be spelled out in the contract.

Mr. McDade. And you would recommend that there be some kind of——

Mr. Sutton. Yes; I do. Collaterally, Congressman McDade, let me be sure that I do not leave here with the suggestion that I recommend only a 10-year franchise period. Because my application in New York is for a 15-year period. And I do not wish to have follow me back to New York or anywhere else that I am for short term franchises. I said I thought there ought to be franchise reviews.

And incidentally, in many contracts between municipalities and franchises there are provisions for review. As a matter of fact, many franchise agreements provide that at any time the municipality can kick you out. Franchise agreements are tenuous contracts.

Mr. McDade. It is tough to finance a contract like that, I am sure.

Mr. Sutton. Not really.

Mr. McDade. No?

Mr. Sutton. The money comes in. There is a perception that there is a great future in cable television.

Mr. McDade. I guess so, if you can be kicked out——

Mr. Sutton. Otherwise Bob Cox would not have left General Electric and taken a position at Cox Broadcasting.

Mr. McDade. Well, we thank you very much for your testimony. You have been very helpful.

Mr. Sutton. Thank you, sir.

Mr. Mitchell. Mr. Smith.

Mr. Smith of New Jersey. I am sorry, excuse me. First of all, I want to commend you on your statement and your thoughts. I think it was very comprehensive.

I have a couple of questions. First of all, with regards to the public service that Congressman McDade referred to, it is my understanding, and correct me if I am wrong, because we do have this going on in my district, that usually it is the town councils that are demanding in many cases that there be public access, and there is no FCC requirement at this time.

Mr. Sutton. That is correct, sir.

Mr. Smith of New Jersey. Would you recommend an FCC requirement or any kind of regulation, either passed by this body or by the FCC?

Mr. Sutton. Right now many of the giants in the field are hoping that the FCC will take action, and that Congress will take action, and ease away from the cities.

My position is it is the city streets that are being used. It is the city's facilities that are being utilized, and as such the cities ought to have control.

Yes, I do recommend it remaining with the cities.

Mr. SMITH of New Jersey. Even if the pattern would develop that some of the——

Mr. SUTTON. Excuse me. It is not just the cities.

Mr. SMITH of New Jersey. It is the suburban and municipal——

Mr. SUTTON. When I say cities I should say municipalities.

Mr. SMITH of New Jersey. Or municipalities?

Mr. SUTTON. That's right.

Mr. SMITH of New Jersey. So you would see it as more of a home rule, local issue as opposed to something being done down here.

I agree with you on the multiple franchise idea, because we do have in my district, because there is the boom as I think is going on elsewhere in the country, one company getting the whole thing, and I would like to see more diversity. And you answered one question that I had, and that is, kind of like a cap or a suggested number of households, 50,000 I think you said——

Mr. SUTTON. I said that as a minimum, but I do not want to suggest that where there is a city of 200,000 we ought to automatically.

Mr. SMITH of New Jersey. No; but it can be a guiding principle, perhaps. Because maybe below that it would be economically unfeasible to have a more diverse——

Mr. SUTTON. There are many municipalities, sir, that have less than 50,000, and they are doing quite well. I am just saying that I would think were I a city or municipal official I would not wish to have one, to permit one of less than 50,000.

Mr. SMITH of New Jersey. And I also appreciated your comments with regards to putting our political futures into the hands of one franchise. Because I know how, particularly if they are against you or have a bias, how they can immediately——

Mr. SUTTON. It is rather powerful isn't it, sir?

Mr. SMITH of New Jersey. It certainly is.

Thank you very much.

Mr. SUTTON. Thank you very much.

Mr. MITCHELL. Thank you very much, Mr. Sutton.

A thought just flashed in my mind. If I were doing programing for cable I would certainly want to put your presentation on, and I am sure it would enjoy widespread enthusiasm, because you are quite a dynamic and forceful witness.

Mr. SUTTON. Let me say this.

Mr. MITCHELL. It would sell well.

Mr. SUTTON. Mr. Chairman, having been in the political arena and now out of it and not having to look, and I have great empathy with you and sympathy for you, but this is not to suggest that tomorrow if you leave here you do not have—it is to suggest to you, you have great capacity for doing so many things and the training that you are getting here and being buffeted about as you are, prepares you well for that real life that is out here in the business world. [Laughter.]

And the final thing. May I tell you, sir. No I won't tell you.

Mr. MITCHELL. Thank you, Mr. Sutton.

Our next witness is Mr. Robert Wright who is the president of Cox Cable Communications, Inc., and he has some other gentlemen with him.

Before you make your statement let me indicate that the House is now in session. I will try to ignore the foolish votes that come up, you know, a quorum vote, or some other kind of silly vote, but if there are votes on bills—we have three bills on the floor—or amendments thereto, I will have to leave and make the vote and then come back, and we will recess briefly each time.

Mr. Wright, thank you so very much for being here. We have a copy of your testimony which you were kind enough to give us in plenty of advance time.

TESTIMONY OF ROBERT C. WRIGHT, PRESIDENT, COX CABLE COMMUNICATIONS, INC.

Mr. WRIGHT. Congressman, thank you for inviting me.

I think that it is unfortunate that I have to follow Mr. Sutton, because I think the only appropriate program to follow Mr. Sutton is an adjournment. But since that is not appropriate right now I will do what I can.

I would like to mention one thing in passing, and I will try to refer to the material that I have submitted to you, but not dwell on it because there have been other comments here, other issues raised that might also be of interest to you and the committee.

First of all let us put into perspective what our business is, because I think that in many respects the media, along with a number of people on the political scene, do not quite understand the relative size of the business that we are talking about.

We probably do belong in front of your subcommittee because the cable industry is a small business. And I say that because in 1980 the revenues, the total revenues of the industry—and this is not part of my prepared statement but it is, I think, somewhat enlightening—was about $2.7 billion in total revenues, and $2.7 billion in total revenues is really peanuts in terms of many things that we take very much for granted in terms of business.

As an example, the company that I was associated with for many years, General Electric, their annual revenues are 10 times larger than the entire cable industry's revenues were last year.

There is an article in this morning's Post concerning a proposed program by A.T. & T. and CBS to go into what is really an interactive form of communications which may or may not utilize cable, and probably will not. And it explains in just a very summary fashion that the two companies are planning to get together to decide this issue, and I have been aware of this for some time.

I just mention it. Now there are two companies that are talking about getting into some of the areas that have traditionally been called blue sky in cable. And some of the areas that many mayors—

Mr. MITCHELL. What is a blue sky?

Mr. WRIGHT. Well blue sky is what Percy referred to as the technology that was available or thought to be available 15 years ago in cable—the opportunity to have transactions done on your television set, the opportunity to do banking, shopping, things of that nature, which require substantial upgrade in technology in the home, from what we have today, and things that have been available in other industries. I mean the technology has been available because of the microprocessor for some time, but it has never been economically feasible to bring it into the home.

But these two companies, for instances, A.T. & T.'s assets are approximately $125 billion. Their assets are 46 times larger than the entire cable industry's revenues were last year. That is their assets, not their revenues, just their assets.

CBS's assets, and CBS is a relatively small company in the Fortune 500 scenario, CBS's total assets are about the same as the cable industry's assets.

Exxon's most recent lease venture, they committed more in their entire offshore lease venture than we have committed in the entire industry.

My point is that we are a small business, commonly thought of as a major industry, trying to become a much larger cohesive business, perhaps in industry. But it is important for you to keep in perspective how big we are and how big we are not. And that issue is important, and I think Percy Sutton has focused in on a lot. I have really no disagreement with anything he said.

He has focused in on a lot of very important issues for him. He sees an opportunity, and he sees an opportunity and is speaking as a minority entrepreneur, he is also speaking as a pretty good entrepreneur regardless that he happens to be a minority. He probably has been terribly discriminated against because Percy Sutton today is probably worth, I will just take a guess of $10 million. If he was white he would probably be worth $100 million today. Because his skill level is very, very high.

You raised the comment about the ability of others to parallel his program, and he kind of dodged that one a little bit, because what else could he say? Except that I can tell you that his skill level is very, very high, and his associates are very high. And what he really portrays is the ability of, in his case, a minority owned company, to demonstrate a very high professional skill level.

They are able to go into the money market and do things that heretofore very few minority companies have been able to do. That does not mean that many, many more cannot. But it is important to realize that that is the step they have taken. They have pulled their act together in an enormous capacity.

And they are going out looking at business and they are not competing against really, against General Electric, and against A.T. & T. They are competing against the smaller companies which make up this $2.7 billion industry, not $2.7 trillion industry.

So we have come a long way, but we are basically, our origins as very small businesses and rural environments are not too far behind us. And the big city situation today is unique in the sense that the cost of capital in those cities is very, very high against the assets of all of the companies that are involved.

And Wall Street, and the banking community is as concerned about that return on investment as they probably are of any others because I would suggest that our asset base in our entire many industries, so to speak, is quite a bit smaller than they would like to see it, considering the amount of money that Cox and Percy and other people are borrowing to put into the industry.

So we have a very tentative balance here to strike in terms of being able to do these things in major cities, with relatively small companies by national standards, utilizing substantial amounts of debt and equity and national fundraising, and showing at the bottom line a good return on those investments.

There have been a lot of comments raised here today about the size of franchises, and what that would mean, and I can say that one of the issues that we have is that we do have a lot of technology available today. We also have a lot of interest on the part of the larger cities, which happen to be in chronological order, the last ones to franchise.

And those demands create very expensive plants. They create tremendous capital investment which is basically nonrevenue generating. Local access, local origination, a lot of studio, doing an awful lot of things that are very important to the community, but they are very expensive.

If you divide up that package and you say we are going to have instead of 1 person doing all of it we will have 10 people do all of that, then it becomes economically unfeasible.

What you have to do if you do that is you have to go back and say, well we are not going to have 10 of what we proposed one would do, but we will have 10 of something else. And, in other words, you have cut down the order list to make the system economically attractive for all 10, as opposed to just taking a system which was in theory economically attractive for one does not mean you can create 10 identical systems like that.

And that is something we are all trying to work with. What can be done in New York City because of the enormity, the enormity of the size of the city, it would be a mistake to leave the impression that, any city could have the kinds of bids that New York and Boston are having divided up into 50,000 home markets. Because it does not appear at this time that there is any way that could be economically feasible.

But a city could still have 50,000 home markets or 25,000, but the programing, not the programing, the plant would have to be somewhat scaled down to accommodate a much smaller base. It could be done, it is not difficult, but that understanding has to exist. And when a city goes out and looks at that, one of the political realities is the city wants to have the finest, most technologically updated system available, and no council, no mayor, wants to be in a position of having something that he considers to be less than the state of the art in his city.

And so when it is suggested that we could end up with 10 systems in a given city but they would all be less than the current state of the art, that idea is usually dismissed as being unacceptable for those kinds of reasons. But it is possible.

So there are trades that have to be made. You cannot build a building too big for the intended purpose is what I am really saying.

There are a couple of other issues that would be worth commenting on, I think. One has to do with the comments made by Mr.

Royer concerning regulation and some of the implied comments made by questions asked by the committee.

And there is a lot of discussion about the current Senate legislation which may or may not be passed at this point in time. But my comment is that very little of any of this discussion, pertinent to this committee, or very little of the discussion that anybody has made about regulation has anything really to do with that particular bill.

That bill really is a common carrier bill, designed to free up A.T. & T.'s ability to compete, and it has one aspect of the cable industry which is probably the most disturbing to the cities, but it is not really an issue relevant to this, and that requires that the cities cannot raise the franchise fee beyond 5 percent.

And that is really at the heart, in my opinion, of most of the National League of Cities' and cities' concerns because they have expressed that to us on many occasions privately, that they would like to substantially raise that fee.

And they are hoping that the FCC will drop the requirement, an issue which it has had under study for some time, and that if this bill were not passed and the FCC does drop the requirement, then they will be free to raise the franchise fee substantially and therefore garner more revenue for the cities.

And I think that really lies at the heart of the whole controversy, and the rest of the issues of regulation are not really dealt with in that particular bill.

The city can contract, the city's current relationships with the cable operator are based on contract, having to do with the franchise. And there is really very little that that bill does to that.

The question was raised by Congressman McDade a few minutes ago, that whether or not they serve the public interest can they lose the franchise? The answer to that is that it is up to the franchise, and certainly we enjoyed over 200 franchises, and there is not one on there where there is not a review process of some sort. And there is not one on there where the city could not require us to, by making reference to some specific provision, find us in default for not providing something that we elected to do.

I think most cities are very practical in their orientation to administering those franchises, and you can usually work out issues when both sides explain what the situation is.

And I know in the case of New York, which is probably in one instance the worst and the other the best example of a very difficult situation, Mr. Sutton and others associated with him and associated with the board of franchising in New York for years had to negotiate in a very difficult manner, with two companies who were struggling very, very hard to try and do that which everybody thought was possible but financially turning out to be not attractive at all.

And they lost money for many, many years, and I really do not know what the current state of that is, but I know that they received a lot of help and assistance from the municipality in that case, based on a recognition that those were the facts as presented.

They could have taken away the franchise for a number of different reasons if they had elected to do so, and I am sure that issue was before them many times, but they elected on behalf of it not to do so because it was not thought to be in the best interests of the entire city at that point in time.

The industry is stronger, money markets are more open to us now, technology is more advanced, and hopefully we can do a lot better in major markets today than we could have 15 years ago, provided we can get the recognition from the municipalities that the job has to be one that is attractive financially, or it will never get done.

I would like to if I may summarize some of the comments in here, even though they are somewhat, a little different from some of the comments made by earlier people.

We have, the industry, or what I am calling the small business going to a large business, has a rural orientation, has a rural origin, and its rural origin realistically does not reflect a minority community center. Its focus has been principally in smaller towns originally, and in mountainous and in many respects in areas just having poor television service.

And the local politics of the situation, the demographics of the situation really never encouraged minority participation in any form. That is both in ownership and in employment and in service.

That is changing substantially as the industry moves into larger cities. And I think in Cox we recognize, we always recognize the reasonable need to maintain parity both in terms of employment and orientation with the communities we serve. That is both politically important and good business.

As you get into the cities you have more and more opportunities, the minority influence becomes much more significant because the parity issue just becomes a much more real one. You have many more minorities in cities than you do in the smaller rural areas traditionally served by cable.

We have in our business, in the last year especially, because the capital needs of the business have increased so much, we have tried to look very hard at establishing from the standpoint of first talking about dealing with minority suppliers, both of hardware and software, or programing, as the case may be, and I can summarize that our objectives, in our own notations to our own people, which I stated on page 2, maybe I could just read a word of that.

I stated that our objectives center around supporting minority concerns whose products and services are on the first hand competitive pricewise with existing vendors. In the event we are unable to satisfy our minority purchasing commitments solely from concerns who are financially competitive, we will look very hard at supporting minority firms who demonstrate a long-range objective of serving this industry, and who we believe will be financially competitive in the near term.

And, too, that probably, as much as anything, summarizes our approach. We are going to be in the business a long time, and we are looking to associate ourselves in terms of dealing with the products we buy with people who have similar objectives.

And to the extent that they have to be price competitive, if they are not that they will be price competitive in the near term, that becomes a very important objective to us.

Many such firms are emerging today, but it would be incorrect for you to assume that in our particular area that in this industry that there have been a long list of minority owned or minority firms, or firms with significant minority participation of long standing who have been standing as suppliers to this industry. That has more or less been a more recent phenomenon.

And it is growing, and you should be happy with it. You probably would like to see a great deal more, and I know a lot of the firms would, but that issue is becoming much more attractive today, and that opportunity is becoming much more attractive today, as people enter it and try to maintain a competitive environment.

This is an industry which on the hardware side is served by large original equipment manufacturers, and there are many distributors into the industry, and that is a great opportunity for minority ownership.

But the original equipment manufacturing is again another capital-intensive program, and it discourages as it does in any industry, immediate minority participation. You do not want to have to go out and make cable, for instance. It is just difficult to go out and be competitive manufacturing metal cable on day 1. Nobody has, perhaps if Mr. Sutton had been in that business as opposed to choosing to be in broadcasting we would have a minority cable supplier today. But there is not one today.

But there are a lot of people that I would classify as primarily in the distribution end of the business and in the small electronic assembly area, both of which have very good opportunities.

We have, in our objectives we have tried to put as much, I hate to say pressure, but have tried to raise the consciousness of our local system managers as much as possible to minority purchasing opportunities. But in reality it is probably a program better done out of our Atlanta headquarters, and we have centralized our purchasing for our own reasons, and it makes it more attractive for us to put vendors on an approved list, if we can deal with them on a centralized basis. And that is the approach that we have taken.

And we have gone through the same phases that most industries have gone through, where you say basically there are not any good minority businesses in the industry, the industry is too technical, nobody has technical products, and so forth. And there is certainly a lot of truth to that. But you have to keep looking further to get, to develop the kind of vendors that you feel comfortable with.

As I have said here, we will expect this year our total corporate purchases from minority businesses will exceed $3 million by the end of this year, and they will include now a number of different things where we have coaxial cable, a certain portion of which we do buy through distribution, and that portion is almost entirely minority vended, copper wire, cable hardware, cable strand—again items that are oftentimes purchased from Japan or purchased from very large metal companies, but where we need standing inventories, we can obtain that through minority distributors.

Connectors, test and studio equipment. And there are some minority vendors who are entering the equipment area, and that is a very complicated area, requires good technical expertise, but they are doing the same things; the shrewd ones are doing the same things that large American companies have been doing for years. They go offshore. They go to Japan. They go to Taiwan. They get the assembly done over there and they basically are assembling a finished product back here in the United States.

And so they are really not involving a great deal of American labor in the product, but they are also getting around the fact that they do not have to maintain hundreds of engineers on their own staff. They are doing what a lot of very large companies do, even though we fail to recognize that sometimes.

But that takes a certain amount of skill level to go out to pursue that and understand how to do that.

We have listed some of the items that we buy or we maintain lists of people on.

In addition to purchases of equipment for Cox Systems the company also has redirected a portion of its corporate expenditures for management and recruiting services, printing, office furniture, air travel services to minority businesses.

Now this really does not have anything to do with the cable industry. These are businesses that serve many other Atlanta-based companies, and does not necessarily orient itself around cable. The point of making reference to it is that we spend a lot of money in very traditional manners.

Your flying down here, there is nothing particularly exotic about that. I buy a ticket from somebody to get down here, and the hotel, and all the rest of the routine. So that there are a lot of areas in a large business or business that has a lot of people where you can also support minority businesses that get out from under the issue of having to buy just purely hardware or things of that nature.

And we have taken, a lot of businesses in Atlanta have, a very serious approach in that area, and we are pleased to say we are getting good vendor support.

Probably the most, the largest example that I could point to that might be somewhat helpful to the committee, is our current experience ongoing today in New Orleans.

We have goals and objectives negotiated with that city council, concerning what it is we are proposing to do from a minority standpoint in terms of spending our money in that city.

That is an issue, for instance, again I point out, that situation or the Boston situation or other situations like that have nothing to do with Senate bill 898. That situation is unaffected by that bill. Our contractual obligations, so to speak, on that are not dealt with, neither impaired nor extended by Senate bill 898. It is a terrible misconception that there is a great regulatory schedule out there which all of a sudden is going to be eliminated.

That is not the case. The regulatory framework is one that is contractually set together by the municipality having to do with protection of its rights-of-way, which are not impacted by that bill. It is only the issue of raising the franchise fees or negotiating the rates of basic service upon a showing of competitive presence.

And it gets to be a very complicated issue, but it appears to me to be blown way out of proportion to what it is.

At any rate, my comment is that none of these things would be affected by Senate bill 898 whatsoever, as they would not be in other franchises.

But in this particular situation we think that we have awarded today the single largest contract for cable installation, valued at more than $1 million to a New Orleans minority owned firm. We are negotiating with minority contractors to provide approximately $10 million in construction, and these two areas I point out to individuals who come to our company looking for an opportunity to participate in our capital programs as very good opportunity areas—construction, installation.

They are heavily labor-intensive, they are technical, but the training and the expertise can be obtained in a relatively short period of time, and it requires really just good management and good number watching as opposed to having legions of people and warehouses and all kinds of the things that discourage people from getting into business.

And there is a heavy minority population in New Orleans, and in point of fact it would be ridiculous to try to build, because we are really a construction company, to try to build a construction project of that magnitude, without recognizing the population you are serving. I mean it just would be physically impractical.

So it becomes a very good opportunity, but it is not—again, we had to go out and to scout a lot of people. People did not come to us with endless lists of proposals and so forth.

The process of developing the infrastructure from minority companies and the training and expertise is how to be a company and how to go out and solicit business and analyze the industry you are trying to serve and come up with a proposal that looks like it is going to be competitive from day 1 is the thing that has not happened yet, but it is starting to happen.

As a couple of these catch fire then they will hit other cities and go to other companies like ourselves, with similar types of proposals.

We have located a Phoenix-based minority firm which will provide us with approximately $6 million in cable electronics, and these are principally electronics that you have to maintain substantial inventories of.

And we have awarded approximately $3 million already, contracts for the delivery of cable drop wire and strand to a local minority owned firm.

This is probably the most substantial commitment in terms of hard dollars. This is not equity ownership in our franchise; that is another issue. This is actually, by my way of thinking and by the way of thinking of the people involved, much more substantial because this is real dollars to those people. They are dealing in hard dollars to build that system. They are getting the benefit of the money coming into the municipality.

As I said at the bottom, we do maintain an active search program to identify people. We use our own business contacts, we use the contacts we generate from the Atlanta business community, we use the contacts we generate from the National Cable Television Association, and like any of those situations you begin to develop a file, and that file begins to pyramid rather quickly.

If you want to go out, and today there are many, many people in the industry. Many, many minority companies in the industry who are willing to make good proposals in a lot of areas of the industry in terms of serving that industry from the standpoint of hardware and construction, services, and the software, the programing is really just coming into its own.

I make a comment here that programing is probably the largest single opportunity for any company in the cable television industry. The number of cities that are left to franchise are very, very modest, and it would probably be, it might be, and that is certainly something I cannot judge, but it might be, somewhat unproductive for the subcommittee or any subcommittee, this or any other, to focus entirely on the franchising process because the number of cities left are not that substantial.

What is left to be done is what to do on the programing and the construction of all these miles and miles of plant, and all these channels which have to be programed.

And one of the big boom industries that is going to be around for a number of years, it is going to way outlive the franchising process, is the independent production company. And there are people in Hollywood and New York that are just on an absolute home run today because of the amount of product that they see that is going to have to be produced, of all different types of product.

And many of us do not realize how much product we see today on television is contracted for. It may appear on a network show, but it is not network owned. They go out and they write checks to somebody to produce it. And you cannot tell just by watching the shows, what the networks produce and which is done by outsiders. And some things that may be very commonplace to you would be surprising.

For instance, many of you may watch "Good Morning, America," and you will see John Coleman, the weatherman, who is now—John Coleman, an entrepreneur of some repute, and John Coleman, the weatherman, does not work for ABC. John Coleman, the weatherman, is the president of John Coleman Corp., which is headquartered in Evanston, Ill., where he has lived for many years.

And the John Coleman Corp. has a contract with ABC to provide the weather. And John Coleman Corp. now is going into the satellite business and they want to put a weather channel on. And the John Coleman Corp. is going to hire a lot of people to go out and do that.

But what we commonly perceive as a program, or something that is owned by a network or studio may in fact be an independent producer of some sort.

And there are going to be enormous opportunities to develop and to feed programing into this, and many very modest companies, companies that are rich in talent but maybe not so rich in capital, are out there today setting up independent production houses.

It is not that expensive a proposition. It requires a great deal of entrepreneurial spirit and a lot of contacts in the industry, and it usually requires a lot of knowledge of the industry. But it is, I would say in fairness it is an area that should have great promise to minority companies in the next number of years.

And you do not have to focus in on total networks or channels, but there are just, you know, endless numbers of programing opportunities here that are going to be around for many, many years, that we have not even scratched the surface of.

And we may not buy them. I mean we may not be the direct purchaser as a cable operator, but a network may buy them. An HBO may buy them. A Showtime entertainment channel may buy them. Paramount may buy them. Universal may buy them. Or Cox may buy them.

There are all sorts of different tiers of purchasers, and we do not even know what the real potential of that is.

That is an area that up until now the minority business community has not had a substantial input, but the minority community certainly has a great deal of talent base out there and should be able to take advantage of that.

The last area I talk about is training, and that is something that we can do and we do, and I think if you are going to look for what the top four categories of minorities in companies like ourselves, then it is important that there be a way to get people into the industry so people can emerge to the top four categories with an industry, based on understanding.

We have developed a management training program and an intern program which I referred to in my presentation, which has significant minority goals and objectives, and which we think are being met, and we are very proud of that program.

And it has to do with taking into the management side people who have had some business experience, or maybe none, but most of them have gotten 1 or 2 years beyond some formal education program, and we try to turn them into system managers very quickly, and assign them on 6-month assignments.

That has proven to be the best route that we have come up with to get minority system managers into our business, and I am proud to say we have got a couple of pretty quick success stories, that are doing very fine, and that gets people right into really what is the first line management ranks. By first line I do not mean supervisor or foreman, I mean manager of a cable system.

And that is a program that is ongoing with us and I think will be probably one of our most needed tools just to feed the people needs that we have in the business.

The internship program we have is really developed, and not so much for college graduates but for people who want to be in a technical skill area and want to, and do not have any prior experience whatsoever, and so we will do that.

And we have worked in connection with colleges and universities, we have done the training ourselves, we essentially do not require our systems to pay for these people. We pay for them out of Atlanta, and they get the employee free for a period of time.

In which case they can elect to either put the person on the payroll or not.

Normally they elect to put them on the payroll because at that point in time the person is at a higher skill level than any comparable person they can get off the street. So there is a high incentive on the part of the system to take the employee from our corporate payroll and put them on their own.

And that is also turning out to be a very attractive program for us.

We had initiated, and now it may be somewhat speculative, but we had initiated in the case, for instance, in our Gainesville system, a good training program. Most of the initial participants were qualified to receive CETA funds to pay tuition and minimum wages during the training. That certainly helped us; it cut our expenses down and provided a relatively trained cadre of folks.

That program will probably not be available because that kind of money will no longer be available, but it does not appear that the program will have to die as a result of that. We will just have to take more of the funding ourselves, and, hopefully, look for some more regional funding coming out of that particular labor market.

I guess we, like you, do not know exactly how those things will develop over the next couple of years, but I am sure that we can accomplish some of the same objectives. It just will not look quite the same. We just wanted the CETA funding to do it; we will have to do it some other way.

My last comment is on joint ventures, and this is a comment I think relevant to the committee's work.

The problem with the cable industry, from a minority standpoint, is that the buy-in, the hunks are so big. Radio stations, for instance, are a much more attractive broadcast-entry kind of investment, because they are something you can get the numbers around. You are talking about, in many stations, or small market stations will sell for $200,000 or $300,000. And even some good ones will sell for $500,000 or $600,000.

That allows anybody—a minority company to go up and with a minimum down payment take notes back from the seller, finance it with a bank, and get into the business.

You get into these cable systems and you are talking investments or purchases of upward of $1,000 a subscriber.

So a 20,000-subscriber system can sell for $20 million. So it is not something where somebody can say I want one of those.

The funding becomes a critical issue then. And it is much more cash and much less take back notes, and what Mr. Sutton has talked about is going out and raising money in the equity markets, which is a very, very shrewd move on his part but something that most people are not familiar with, to get the money to put that cash in.

We have in Oklahoma City an agreement with a minority company where they can buy at 80 percent of the market value a large portion of that system, and we will finance it for them. That is a fairly unique agreement. And the price is going to be somewhere in the neighborhood, for their piece, is like $17 million.

Now they cannot raise $17 million, but under this agreement that we have that goes back some time we will fund that. It will be funded out of the cash flow of the business and so forth.

But that is a rather unique situation. My point is that it is not easy to raise that kind of money in any kind of normal type of approach. The dollars are so big.

The software area is probably a much more realistic one for anybody, whether that is a minority or nonminority. It is just big dollars to buy into the cable business.

I mean I am constantly called up on the phone by wealthy individual investors wanting to buy a cable system. And when they get into it they decide that it just is too expensive. It is not an area where they want to have an investment. They want to do something else that returns a higher rate on the investment, and you know, they go on and do something else.

So I am going to suggest that a lot of the so-called lack of opportunity is a function of high prices and the high cost of money, and it is not particularly any more advantageous to wealthy nonminority investors than it is to minority investors. It is just a very expensive proposition.

Going at it from scratch is a more attractive way, if you can get the franchise and if you can get the money to build the system.

The last comment is the issue that I guess I raised before, that there is a tremendous amount of technology out there, we have huge cable plants under construction, we have huge commitments to cities. And if those commitments can be scaled down—and I do not mean after the fact—I mean ahead of the fact. If those commitments can be scaled down so can the size of the franchises to make them economically viable for more than one operator.

We in Cox have tried to put as much management attention as we can on our minority relationships, both in terms of the vendor, the community, the training, the management and in terms of the joint venture area. We think that the longer range implications of that are very favorable to us. We think it is very good business; we think it is absolutely necessary if we are going to do business.

And we are probably the largest operator in urban areas in the United States, and we do not think there is any way that we can be successful in growing that base if we do not have strong minority relationships at all levels—equity, employment, and vendor dealings.

We think it is not only something that is a nice objective, but it is absolutely required in order to continue to grow the business. And we do what we feel is necessary for our business.

Other operators may not share my opinion and my comments do not reflect—I am not intending here to reflect the industry position on these things but simply to say that the nature and the strategy of our business, our company, these comments are very relevant.

Mr. MITCHELL. Thank you very much.

They were not only very relevant, they were very informative.

[Mr. Wright's prepared statement follows:]

PREPARED STATEMENT OF ROBERT C. WRIGHT, PRESIDENT, COX CABLE COMMUNICATIONS, INC.

INTRODUCTION AND OVERVIEW

The need for cable television originated in remote parts of the country which could not receive quality off-air television. These areas were sparsely populated by minorities, and cable companies in these formative years, reflected these demographics. In the ensuing years much changed. Cable technology blossomed with the development of satellite-delivered programming, and the cable product became viable for U.S. cities. Despite these technological advancements, and the industry's new acceptance by major markets, industry attitudes toward small and minority enterprise did not change.

When asked but a few years ago, "Does Cox purchase cable equipment from minority businesses?", the answer was usually no. However, in 1980, Cox initiated an aggressive small business purchasing and contracting program and now has national contracts with seven minority enterprises responsible for providing cable equipment like pole line hardware, copper wire, strand, and studio equipment. The Company is negotiating others.

This program, which Cox believes is a model in its approach for the cable industry today, might never have been developed without the Corporation's highest level management attention. The following letter from Robert C. Wright, President, clearly outlined the Company's minority purchasing policy.

> "It is the policy of Cox Cable Communications, Inc. to encourage and support minority vendors to the cable industry. We can exercise this policy by supporting programs and purchases made through our Atlanta headquarters and in addition by supporting individuals and concerns who wish to do business with our major locations but can utilize our Atlanta headquarters interface. Our objectives center around supporting minority concerns whose products and services are on the first hand competitive price wise with existing vendors. In the event we are unable to satisfy our minority purchasing commitments solely from concerns who are financially competitive we

will look very hard at supporting minority firms who demonstrate a long range objective of serving this industry and who we believe will be financially competitive in the near term. Firms which meet these two qualifications and whose agreements with us are within five (5) percent of our best prices available will receive priority treatment."

THE COX MINORITY PURCHASING/CONTRACTING PROGRAM

Through the years the cable industry has refined its excuses for disallowing small and minority business participation. "There aren't any minority businesses in this industry," and, "The cable industry is too technical" are representative. Cox has found none of these reasons for exclusion to be valid.

In addition to equipment and services acquired by 61 Cox systems at the local level, Cox has purchased or contracted for more than a million and a half dollars in a variety of cable equipment in the first eight months of 1981 from minority businesses. The Company expects total corporate purchases from minority businesses to exceed $3 million by the end of the year and include diverse products: coaxial cable, copper wire, cable hardware, cable strand, connectors, and test and studio equipment. These suppliers are not confined to a single geographic area, but mirror large American business in their location throughout the United States and in primarily large urban markets, including Dallas, Atlanta, Washington, D.C., Chicago, Baltimore, and New Orleans.

1981 YTD	Product
63,052	Copper wire
70,892	Hardware
239,880	Strand, F - Fittings
108,117	Connectors, Test and Studio Equipment
159,755	Hardware, Strand
167,405	Hardware, Strand
756,642	Cable, Drop wire, Strand

In addition to purchases of equipment for Cox systems, the Company has also successfully redirected a portion of its corporate expenditures for management recruiting services, printing, office furniture, and air travel services to minority businesses. Corporate purchases of these services total an additional $30,000 year-to-date.

Representative of the Company's purchasing and contracting goal is its development of the cable system to serve the people of New Orleans. Cox was awarded the City's franchise in June, but has already accomplished the following:

- Awarded the single largest contract for cable installation, valued at more than $1 million, to a New Orleans minority-owned firm.
- Negotiating with minority contractors to provide approximately $10 million in construction.
- Located a Phoenix-based minority firm to provide approximately $6 million in cable electronics.
- Awarded a nearly $3 million contract for cable, drop wire, and strand to a local minority-owned firm.
- Awarded contracts to small New Orleans businesses for facilities renovation and landscaping.

Cox seeks small and minority-owned businesses to supply items of continuing replacement, such as copper wire, strand, and hardware, and items which are commonly purchased in volume by all cable companies. This enables the small business to develop relationships with other major companies, helps develop other new business contracts, and helps pave the way to solid financial independence.

Inherent in Cox's ability to purchase and contract with small and minority businesses is the Company's constant aggressive search to locate new sources of supply. As a member of the Atlanta Regional Minority Purchasing Council Cox has direct access to the Council's Vendor Information System, a comprehensive list of minority businesses. Membership also makes it possible for Cox to quickly access similar information from other regional minority purchasing councils. Cox also draws on detailed information provided by the Small Business Administration, Chambers of Commerce, national and local government, and minority interest groups, including the Urban League, and the NAACP which are generally able to supply lists of minority-owned firms. Finally, the Company gleans information from personal contact, franchise market ascertainment, and word-of-mouth.

TRAINING THE INDUSTRY'S FUTURE ENTREPRENEURS

For small and minority business to be viable long-term participants in the industry, these businesses must have qualified and experienced talent to staff their organizations. Today, minority businesses cannot look to the industry for a significant inventory of such talent and experience. Further, without training there will be few experienced minority entrepreneurs to sustain this participation. Concurrent with the development of its purchasing and contracting program, Cox instituted an enhanced management development program. This program is complemented by new goals for the Company's internship and entry level training programs.

Management Training Program

The Cox Management Training Program prepares a candidate with no prior cable experience to become a system manager in a small system initially, an upper level manager in a large or developing system, or to assist a regional manager in the management of several systems within a region. Comprehensive six-month training involves the future manager in all aspects of cable operations, from marketing and sales approaches to budgeting, collections, and purchasing.

Of 19 program entrants to date, four are minorities. It has produced six system managers; two are minorities. Seven graduates are employed in management positions at large cable systems; one of these graduates is a minority. Another holds a staff position at the Company's corporate headquarters, and five are currently in training; one is a minority.

Internship Program

While the Cox internship program has been in existence for a number of years, it was only recently restructured to provide significant minority participation. The Company seeks participants from high schools, technical schools, community colleges, trade schools, colleges, and universities. Interns learn the cable business and have the opportunity to apply classroom knowledge to a work environment and are compensated at the same time. Compensation form is for the most part dependent on the liaison institution's interests but may include wages, scholarships, tuition expenses, and academic credit.

Since the middle of 1980, 93 have interned. Thirty-four were minorities. The majority of these internships has been allocated at the cable system level where the greatest continuing need for experienced talent is in field operations, marketing, installation, purchasing, community programming, dispatcher, and clerical positions.

At its corporate headquarters Cox has employed nine interns year-to-date in a variety of positions. Four are minorities.

-- Financial intern, candidate for MBA - June 1982
-- Engineering intern, BSEE candidate - June 1982
-- Programming intern, BA Journalism candidate - May 1982
-- Compensation intern, MBA graduate
-- Two marketing interns, both candidates for MBA's
-- Library intern, MA, Library Science - graduate August 1981
-- Accounting intern, undergraduate, accounting major
-- Drafting intern, candidate for BS Economics/Engineering - June 1982.

Training with Local Institutions

At local levels, Cox operations have encouraged schools, colleges, and universities to introduce cable courses into their curriculum. Cox provides course materials, instructors, and equipment.

In Gainesville, Florida, Cox joined with two local utility companies to help establish cable technical training at a local junior college. The objectives - provide the unemployed, particularly women and minorities, technical skills to increase their employment marketability and the participating companies a trained pool of applicants. Most of the initial participants were qualified to receive CETA funds to pay tuition and minimum wages during training. Cox and the utilities provided lecturers, equipment, telephone poles, and cable strand.

Cox supplemented this course work with a 60-day on-the-job-training program for four of the graduates, of which three were minorites.

This program was selected in 1980 by the Department of Labor as one of the top 25 exemplary CETA training programs in the nation.

Cox has since assisted in conducting a second technical training course. It was taught by the Cox Gainesville system engineer.

From the two courses, Cox has permanently employed five of the 29 graduates. Two of the five are minorities. Others are today employed by the participating utilities.

The Gainesville experience has been successfully translated to other communities where Cox operates cable systems. In Oklahoma City, for example, Cox designed and taught a three-week installation course at a local junior college to satisfy the staffing requirements for the construction of this large cable market. Three classes were conducted in 1980 with more than 20% minority participation.

These two examples are representative of the Company's approach to, and philosophy of training. Local educational institution involvement provides the trainable work force. Cox seeks such involvement in newly franchised communities, such as New Orleans, where the Company has already begun preliminary training program plans with Delgado College, which has a predominately black student population.

CONCLUSIONS AND IMPLICATIONS FOR THE INDUSTRY

The cable industry must realize that successful and continuing small and minority business involvement will not occur without corporate management attention. Day-to-day decision making at the community cable system level does not affect corporate policy-making.

It is also obvious from Cox's experience that classic industry excuses for not assisting the small and minority business enterprise are invalid. While cable operators may encounter minor short term cost disadvantages, the longer range implications of such support include continuing involvement by these concerns, and consequently, expanded sources of competitive cable equipment supply.

Finally, the industry needs to reform its hiring and training policies. Cox seeks applicants which can qualify -- not qualified applicants. This subtle, but important difference must be better understood to effect meaningful minority participation in this expanding industry.

Mr. MITCHELL. The definition of a minority is becoming more and more difficult, and I certainly would—want to commend you on your efforts to involve minorities in equity and employment and in the vendor dealing, but I would like to know about the work that you are doing in New Orleans—the single largest contract for cable installation to a minority-owned firm. What kind of minority was that?

Mr. WRIGHT. Black.

Mr. MITCHELL. Black. What about the $10 million in construction?

Mr. WRIGHT. Black.

Mr. MITCHELL. Any women involved?

Mr. WRIGHT. On that particular list there are no women.

Mr. MITCHELL. These are all with black business?

Mr. WRIGHT. And some Hispanic.

Mr. MITCHELL. And some Hispanic.

Mr. WRIGHT. But, I have to be frank, I cannot think of—women have not been nearly so aggressive as the black entrepreneurs in getting into the small business management vendor aspect. As a matter of fact I really cannot think, I think our list would be rather weak in terms of—We have a couple, but I could not give you a couple of names of firms that are owned or controlled by women, specifically under that basis.

Mr. MITCHELL. New York City with its boroughs, almost suggests multiple franchise.

Mr. WRIGHT. It is my recommendation and always has been that that is the only economical way that that could ever be done.

Mr. MITCHELL. You look at my city of Baltimore, you are somewhat familiar with it. We pride ourselves as being a city of neighborhoods, and it seems to me that that in and of itself suggests multiple franchises. Are you fairly familiar with Baltimore?

Mr. WRIGHT. Yes. You have a harder decision. You are at crossroads on a tougher decision, because the size of Baltimore, it is within the grasp of a large company to do that whole job. And the advantages of that would be that the whole thing could be planned out and mapped out; the city could basically have everything it wants is what I am saying. The shopping list, everything can get checked off if they grant it to one company because the economics are probably good enough to allow all that base.

Mr. MITCHELL. But given the cost—if you take that approach, would not that virtually exclude the possibility of a minority ownership in my city?

Mr. WRIGHT. Well, it probably would not exclude. No. It would, from a standpoint of trying to meet up-front cash equity needs, a minority ownership situation would have to be relatively highly leveraged. It could be done, and it probably will be done, but it would probably exclude the four or five split franchise situation where everybody is economically viable. That is what it would probably exclude.

You could do it with one or two sections.

Mr. MITCHELL. Not four?

Mr. WRIGHT. I think four, you would have to change the list of requirements substantially. It would have to be downgraded to make it economically attractive. You could not create, for instance, if you were to do, just assuming that one company did that whole job you would have some very complicated sophisticated master network of studios and whatnot.

If you had five companies doing it you could not create five of those studios. You would have to create five of something else. It would, could be very effective, but it would not be quite the same.

Mr. MITCHELL. Am I safe in assuming that your general posture is that you are not adverse to multiple franchise?

Mr. WRIGHT. No.

Mr. MITCHELL. I commended you for your efforts in terms of equity and employment and vendor dealing, but in your whole statement, insofar as I can ascertain you did not address the problem of minority ownership.

Mr. WRIGHT. I did not specifically, but I did state that, well, for instance in New Orleans, we have minority ownership, too. We do not have minority control but we have a significant amount of equity dollars held by minorities in the New Orleans system. But it is not of the substance, it is not of the type of arrangement that Mr. Sutton for instance would advocate, which is the other way.

Our relationship with Inner Unity is one, we are simply a contractor for him. And is that profitable for me? That is fine. But that is because he has been able to structure a debt situation to finance that. And that is a very unusual arrangement brought about by his own skill level.

We have, the one I mentioned in Oklahoma City, we have a 20-percent ownership by a minority company of the equity in that franchise, and that is the group who has elected now to buy, outright buy a piece of the whole, take a piece of the whole system away and run it themselves. That will be 100 percent owned by that minority company.

In Tucson we have minority investors who will put up hard dollars, but I would say, and in other franchise markets we have, we have had minority participants in the franchising process, investors where we have not won franchises.

It is not a situation today, it is just emerging in the larger cities where minority organizations have been skillful enough at assembling the dollars and the credit to come forward and to be a participant.

And to stand in front of the city council or a group like this and say we are here and we have a line of credit of $10 million or $20 million——

Mr. MITCHELL. The tragedy is that based on your own testimony the opportunity, the area of opportunity for ownership is already greatly diminished. The only piece that is left is too costly.

Mr. WRIGHT. That is accurate. That is accurate.

Mr. MITCHELL. I will ask one more question.

Mr. WRIGHT. There were a lot of those cities that were so unattractive when they were originally franchised that nobody, they had to beg people to come in, because they were——

Mr. MITCHELL. Only those with enough money to do some risk-taking could go into those cities.

Mr. WRIGHT. There have been a lot of people who are no longer in the business, too.

Mr. Mitchell. You heard Mayor Royer's testimony. He took the position that local, small and minority business enterprise will benefit from local regulations by municipalities. Would you comment on that.

Mr. Wright. Well, they certainly can. I have not, there is no, again it is a function of where you are located, but most municipalities, you have the scale problem. You put all municipalities together, most of them are very, very small. And a few of them are very large. And we tend to focus mentally on the large ones, but in terms of numbers there are many more small ones.

Most of the smaller municipalities, for political reasons, are not particularly interested in setting quotas or in even having that issue raised in too much of a form. It is not necessarily in the council's best interest. And I think that is a frank statement.

Mr. Mitchell. Yes.

Mr. Wright. In the larger cities the opposite is true because the minority community has a larger voice in the participation. So, I am not speaking for or against the Seattle situation, which I am not particularly familiar with.

But in New Orleans, which I am very familiar with, we have very specific guidelines negotiated with the city, which are contractual obligations on our part that really have nothing to do with any other regulation. That is just an arrangement that we have with the city, which will be beneficial. It should be beneficial to the city. But it is basically complying with their objectives.

And if the city wants to have objectives in that area what I am saying is that they can. But it would be misleading to think that all cities are necessarily saying that is what they want. Some are and some are not.

Mr. Mitchell. Mr. Smith.

Mr. Smith of New Jersey. Thank you, Mr. Chairman.

I want to commend Mr. Wright for his very exhaustive statement and commend him on his purchasing and contracting insights as well as sensitivity and also for training the industry's future entrepreneurs, as you mentioned.

I looked over your statement and the piece that your company, you and your company have put together, I noticed that there was a very high degree of technical experience on those that were in your program. At least based on the MBA's and those who are going through various stages of education. And, in my opinion, and I hope that you would comment on this, I think most of the problem lies in education.

Even Mr. Botein in his statement, which he will be making to witnesses down the road, he said the real problem for most small businesses in bidding for cable television franchises seems to lie in their lack of experience and planning engineering and packaging their application. And he also goes on to say all too often, however, small local or minority owned firms lack in a variety of skills necessary to make credible franchise applications.

And I think that is the real problem. The fact that the school, the colleges and universities as well as the technical schools have not trained an adequate number of people, minority or others, to go into this area, and your company seems to be trying to correct that to some extent.

Now my question is, what do you feel that the Congress and this subcommittee should be doing in terms of law or policy to try to correct this situation? Because it is not just minority businesses, it is all small business.

And we saw this recently in oversight hearings on the Small Business Committee, with Chairman LaFalce, where one company after another in the area of defense contracting did not become participants, for one reason. They felt they did not have the technical expertise to make the desired piece or apparatus, or whatever, for the Navy, Army, Marines or Air Force. And when they were brought into the equation they found that yes, we can make this, particularly in the area of tool and die.

So I would ask you, what can we do as a Congress to try to correct the situation?

Mr. WRIGHT. Well, you have a specific role, a specific opportunity to do what you can from an incentive standpoint to encourage small business entrepreneurs to allow them to be competitive with people who are well established.

And there are endless approaches to that, and the ones that I personally favor are the ones that are more incentive oriented, where you provide tax incentives and relief that give them at the early stages a chance to keep a larger portion of their profit than larger corporations would, under similar circumstances.

That is only part of the problem, though. I think that there is, Botein comments, and the comments made earlier, there is a skill level, a business skill level that has to be achieved before a business gels. You need somebody in that organization who can set direction and standards and place out——

Mr. MITCHELL. Goes together.

Mr. WRIGHT. And that does not necessarily have to be learned at an institution. I mean an educational institution. It can be learned by experience and a certain amount of jawboning on the part of people like yourself, in committees like this, with large corporations, to make sure that people are in there getting on-the-field experience in that area, especially minorities, recognizing that probably a lot of them will leave, but that they will build up some skill levels of what I call professional skill levels.

Unfortunately it is very critical. The ability to deal with the lawyers, the ability to deal with the bankers, the ability to deal with analysts, if you have that ability you have a substantial leg up, on people who have a good idea but do not know how to execute it.

Mr. SMITH of New Jersey. Yes.

Mr. WRIGHT. Some of that can be had through association with larger businesses, some of it can be had through higher education; some of it can be had by exposure to Government or a more active participation in Government hiring practices. It is exposure. And I do not know that there is a particularly legislative scheme that I could suggest, to recommend, that would complement what the work of this subcommittee is that makes that happen.

But I can sure as hell spot a situation where one looks promising and one does not.

And you see, the frustration on people is the hardest thing, where people feel that they have a great idea, and then they feel that they lost out because they had poor packaging or something.

And they will say, well that is unimportant. But it is not unimportant.

You have to fit into that scheme of selling yourself, your product, your services, your company or whatever, and some can do it a lot better than others. I guess I do not know that there is a legislative answer as to how to get that done, but there sure are real physical learning things that can go on to get that done.

Mr. SMITH of New Jersey. OK.

Another question I have, you mentioned the average fee levied by municipalities on the cable, the various cable systems. What is that average fee?

Mr. WRIGHT. Well, in the larger systems it is 5 percent. And that is a ceiling imposed by the FCC, that they cannot exceed.

Mr. SMITH of New Jersey. And they usually go to the ceiling?

Mr. WRIGHT. Yes. It did not used to be, and that is why the FCC put the ceiling in. We had some situations where the fees were as high as 30 percent of gross revenues of the system, and that would really wipe out a system today, because your broadcasting and video disks and tapes and STV and all those other things do not have any regulation fees whatsoever.

So that the essence of Senate bill 898 is that it says that the FCC must continue to maintain guidelines around that fee. And there is a lot of strong feeling on the part of the cities that those guidelines should be lifted and they should be allowed to charge a tax.

It is a tax on the cable operator in a form that they think is appropriate, and of course none of us are too keen about that because nobody else is paying that kind of a gross revenue.

It is a gross-revenues fee, and it is 5 percent. In the smallest towns it is 3 percent and can be anywhere from 3 to 5 percent. In the larger cities it is pretty much 5 percent across the board.

Mr. SMITH of New Jersey. So then, conceivably, too, along the same lines, a poorly run cable system, particularly since it is a gross fee, could end up going down the drain and it would be more than likely that would be a small business operation as opposed to the bigger business?

Mr. WRIGHT. Yes.

Mr. SMITH of New Jersey. So it may actually work against the small business community, if such a lifting of that fee or regulation——

Mr. WRIGHT. What happens is if the fee is allowed to float, even though over time it may settle at some attractive levels, which is the essence of deregulation, the real fear, and I see it all the time because I spend an awful lot of time out raising money for our business, is that the people that lend the money, that invest it—the banks, the market and the public markets—will be terrified to put money into a business if they think that they cannot get accurate pro formas.

You could recall Mr. Sutton and ask him how well his underwriter would like it if there was a sudden comment by New York State that they had the legislative ability to raise the franchising fee to 30 percent. He would probably have a number of phone calls on his desk by the time he got back to New York concerning his finance statement, that we would like to reconsider this whole package because we think now it is a highly speculative investment from the standpoint of getting your money back.

Mr. SMITH of New Jersey. I see your point, and it is well taken. Is there any move to try to make that a net as opposed to a gross? It seems to me the net would almost be like deductions on personal income taxes. It is more an assessment of what you really are worth.

Mr. WRIGHT. Well, if we were a little smarter that would be the move. Right now we are just trying to keep it from not getting higher than it is.

Mr. SMITH of New Jersey. OK. One final comment. I appreciated your thoughts in terms of directing the energies of this subcommittee as well as the minority and small business community toward the programing opportunities that now exist for producing programs for cable, as well as the established networks.

Mr. WRIGHT. It is an enormous opportunity for a lot of people, that cuts across the small business community, in almost every phase.

Mr. SMITH of New Jersey. A very good point.

Thank you very much for your testimony.

Mr. MITCHELL. I, too, thank you very much for being with us today.

I want to acknowledge the presence of Congressman Bill Gray from Philadelphia who has joined us, and we are grateful that you were able to join us.

I might suggest, Congressman Gray, that you would probably feel more comfortable over on the Democratic side rather than where you are.

Mr. GRAY. Mr. Chairman, I am delighted just to join you and sit in on these hearings, which I think are very, very important, and commend you as the distinguished chairman of the Small Business Committee in holding these.

And you are absolutely right. I think I probably belong on that side, but after yesterday's voting I do not know where I should be right now, after the voting on the South African legislation.

But I want to commend you, and I am here just to listen and to be informed on this particular issue, which is important to all the people in urban America.

Mr. MITCHELL. Thank you.

Mr. Richard Brown, from Brown, Bernstein & Longest.

Thank you very much for being with us here today.

TESTIMONY OF RICHARD L. BROWN, OF BROWN, BERNSTEIN AND LONGEST; ACCOMPANIED BY DIANA DUDLEY, MANAGER OF MARKETING SERVICES, MACLEAN HUNTER CABLE TELEVISION

Mr. BROWN. Good morning, Mr. Chairman, members of the committee, and counsel.

Mr. Chairman, if I may, I would like to make an introduction of the lady to my right and your left. This is Diana Dudley.

Mr. MITCHELL. Dudley?

Mr. BROWN. Dudley. D-u-d-l-e-y.

Since June 1981 she has been the manager of marketing services for Maclean Hunter Cable Television, which is my client. She is in charge of all marketing of all existing and future services in the United States and Canada for Maclean Hunter. She has a very extensive background in the cable television industry. Prior to being with Maclean Hunter she was a national account manager for Home Box Office. Prior to that she worked as a pay-TV administrator for Viacom and had considerable experience concerning the early financing opportunities for minorities in cable TV when she was with the Cable Communications Resource Center here in Washington, which is a division of the Booker T. Washington Foundation.

She would be glad to answer any questions that you might have after my presentation. I am pleased to have her with us.

Mr. MITCHELL. We also welcome you.

Ms. DUDLEY. Thank you.

Mr. BROWN. Mr. Chairman, I would like to make a few comments on a couple of the things I have heard this morning.

One is there have been several questions that have come from members of the committee concerning FCC regulation, specifically the 5 percent franchise fee.

Mr. MITCHELL. May I interrupt you for just a moment.

Those persons who are leaving, if you will go outside and converse. We have difficulty in hearing the witness if you are there talking. If you will just step outside the door that would be helpful.

Sorry to have interrupted you.

Mr. BROWN. It is all right, Mr. Chairman. Thank you.

We have in the audience, and I recommend to you and to your very capable and knowledgeable counsel, that at some time he might appear as a witness if you are going to have further hearings, Mr. Bill Johnson who is the chief of the Cable Television Bureau of the FCC, who has participated in cable regulation with the FCC for some 11 years now, and is very knowledgeable on answers to all of those questions that were asked, he might be an attractive witness to have in your further hearings.

In your opening comments, Mr. Chairman, you talked about the desirability of investigating and studying this industry because it has seemed to have reached a high level of consciousness throughout the United States in terms of articles that are now appearing in Time magazine, Newsweek, and other magazines.

Back when I was at the FCC, in the late sixties and early seventies, when not very much was getting done in terms of cable, partly because of the FCC, we used to talk about the possibility that we would paper the Nation with studies before we wired it.

And I would suggest to you, Mr. Chairman, that if in these hearings you find that there are some legislative opportunities for the Congress that there be immediate action on those legislative opportunities because although half the Nation is not wired and half the subscribers do not have anybody that is committed to wire them, all those cable franchises are going to fall very soon.

So if you find some action is necessary I would suggest that you proceed with a great deal of haste. I cannot imagine that the big cities will be available 2 years from now. I think they are going to go quite rapidly.

In terms of my own background, I am an attorney. I represent communications clients. I was with the FCC during the years when it formulated its cable television policy. Later I became counsel to the Community Antenna Television Association which is the organization that represents principally the small businesses in cable television, the independent operators. Mostly the smaller operators.

I happen to own a small cable television system myself, and I am now counsel to Maclean Hunter, a multiple system operator based in Canada and which has been operating in the United States since 1975.

Turning to my testimony, a lot of this has been stated before in terms of the early history of the industry. But it is important to note, and I think to reemphasize the fact that this essentially was in its creation, and still in large part today, a small business opportunity industry. All the early systems were mom and pop businesses. They were small, they were usually created by independent entrepreneurs in their own communities.

There was some logic to the development of cable, too. It was a question of necessity being the motherhood of invention. That is, in mountainous areas you could not receive the television signals from the large cities where television first started. That is why cable started in the smaller communities and then paved its way into the larger cities as more and more programing became available.

There was in effect a long-term freeze imposed by the FCC on the development of cable, which existed from about 1966 until 1972. And that largely precluded, not totally, but largely precluded, the development of cable TV in the top 100 markets.

In 1972 that freeze was broken. Simultaneously satellite television technology became available, and in 1975 Home Box Office decided to take its nonbroadcast programing, that is, the movies it provides, to the satellite and provide for nationwide distribution.

But even so there was no large rush right into the major cities. Most U.S. cable companies did not have experience in wiring the larger communities. There was an uncertainty as to whether additional broadcast television would be welcomed by urban dwellers, who already had substantial amounts of television available to them, and there were not very many services then available on the satellites.

During that period of time there was also a lack of capital in the equity markets. Suburban Cablevision in New Jersey, which is now a subsidiary of Maclean Hunter, was a small company which could not find a U.S. cable company to join forces with it in order to build a system for those suburban-type subscribers.

They went to Canada. Maclean Hunter joined forces with Suburban, and that is principally because the Canadians had the exact opposite experience. The cities were built in Canada first. So there was not a fear of going into the cities. There was no apprehension.

That suburban system today passes a quarter of a million homes in northern New Jersey, has 125,000 subscribers, and serves 41 communities. It is only really, I would say in the last 3 years, that the major cable companies in the United States, both U.S. companies and Canadian companies, have started to move in to the larger cities and go after the urban franchises.

During this first 15-year history there is another overlay of development in the industry. Going from a mom and pop industry, the mom and pop started to go to neighboring communities, and they became larger and larger cable systems. Also new entrepreneurs were attracted to the cable television field. Broadcasters, networks, movie producers, they all wanted a piece of the cable television action.

So it went from a mom and pop industry, by way of merger, by way of consolidation, and by way of new entrants, so that today the 10 largest companies control approximately 40 percent of the country's subscribers.

However, unlike other large industries, there still are independently owned systems in this country, small businesses own them, and it is approximately 25 percent or 1,000 of those 4,000 systems which are owned by the independent smaller businessmen, and they control about 15 percent of the subscribers today.

If we look at the role of small businesses today in big-city franchising, I think the bottom line is there really is no role for the small business that started out as a cable TV entrepreneur.

One, it is very risky. It takes a lot of capital to build a large city and the returns are uncertain. There are a lot of new services to be tested and tried. The entry costs of participating in a franchise proceeding are very high. They are $200,000, $300,000, $400,000 to really do a good job in a major market. And a lot of these small companies really do not have the financial ability to go after the large cities, to compete with Teleprompter, Westinghouse, Cox, or Maclean Hunter, or other companies.

I think it is important then to focus on another overlay in this industry, and that is the role of the local partner. The local partner has been traditional almost since the beginning of the industry. Back when mom and pop built their own cable system they knew everybody in the community and it was easy to build.

But as they moved on, as they moved to neighboring communities it was often necessary to have somebody, usually an attorney, to represent them, and that would help them get the franchise with the local franchising authority.

Oftentimes they ran into other entrepreneurs who were also interested in building a CATV system in the same community at the same time. And that was the birth of the cable franchise competition.

Almost from the beginning there were two elements to this competition. Which company offered more to the community and which company had better community contacts, or, bluntly stated, who better knew the decisionmaker?

As the art of franchising became more practical and refined the first items on the agenda for an applicant were to obtain a local representative who knew the mayor or city council members, and then to attract local residents to become partners or shareholders in the application.

Through good standing in the community and interpersonal relationships with the decisionmakers a cable applicant could improve its chance of success. Not many cable operators would quarrel with the fact that the choice of the right local group was just as important as the contents of the application.

Today the sophistication of the cities involved in cable franchising is equal to that of the cable companies. Cities have consultants to guide them through the application process, as well as to conduct the franchising proceedings and evaluate the applications.

I think one of your later witnesses, Mr. Botein, is just such an expert, and he does that.

Notwithstanding this independent advice, there is still a great reliance by cable companies on local investors. Traditionally the extent of local ownership has been up to 20 percent. The U.S. tax laws permit the consolidation of income and losses from subsidiary companies only when 80 percent or more of the company is owned.

Because cable construction is capital intensive and because cable usually operates at a loss for a number of years the investment tax credits, depreciation, and startup losses are significant to the cable company. Therefore, the 20-percent limitation has probably applied in 99 percent of the franchises that have any degree of local ownership.

From the point of view of the local partners 20 percent has been a favorable number, principally because that 20 percent has either been a carried interest or has involved sweat equity, that is, working for the cable company and helping it win the franchise. It resulted in a handsome return on the investment in either case.

As cable enters urban areas it can reasonably be expected that some amount of that traditional 20 percent will flow to minority and women as reflective of the political makeup of urban populations and the municipal councils that grant the franchises. In effect, the local owners become small business participants with the larger cable companies.

However, there is a trend working against the continuation of the sweat equity and the carried-interest concept for local partners, and that is the backlash against the so-called rent-a-citizen phenomenon.

Today mayors and city councils do not wish to be perceived as having a bias for friends involved in cable applications or for political figures that may be connected with cable companies. Thus the notion is brewing that unless there is a pro rata dollar-for-dollar commitment by local investors in the cable application, local ownership should be discounted as a favorable item.

The effect of this, of course, is to permit local ownership for the very rich or for those that have the ability to raise funds, as Mr. Sutton described he was able to do.

Twenty percent of a $100 million build requires a substantial local investment or guarantee of funds. The natural consequence of the anti-rent-a-citizen sentiment will be to further disenfranchise small businesses, and in particular minority enterprises from the cable process in the large cities.

It is becoming a cruel fact of life that as cable finally comes to urban areas where there are significant minority populations and significant minority representation among the decisionmakers that there is a corresponding decreasing chance for significant equity participation by local owners, particularly by local minority owners who are usually without the significant resources necessary to buy into a cable application on a dollar-for-dollar basis.

In other words, anti-rent-a-citizen will work against minority ownership in the large urban areas.

There are some exceptions. In the last 2 years some cable companies have departed from the traditional 80-20 participation. I think Mr. Wright gave an example of what his company has done in Oklahoma City.

Maclean Hunter Cable Television has filed applications in major markets with a variety of ownership configurations.

For example, in Tucson, 40 percent of the application involved local ownership; in Milwaukee, 40 percent involved local ownership with half of that in a local public offering open to everybody in the community; and in Fort Worth, 50 percent was allocated for local ownership—33⅓ percent to a defined group and 16⅔ percent was also slated for a public offering.

There are other Maclean Hunter applications that reflect significant minority and women ownership. For example, in Pontiac, Mich., 15 percent of the application is minority owned and 5 percent will be made available to a nonprofit local citizens group.

Maclean Hunter's local participation as anticipated in both Detroit and Baltimore will involve minority ownership of at least 75 percent of the portion of the application that is locally owned.

Another Canadian company, operating in Atlanta, is 20 percent minority owned.

U.S. companies have also provided greater than 20 percent local ownership in some instances and have also involved significant minority participation.

Admittedly, the Canadian companies have greater incentive to continue to offer better than the 80-20 arrangements because of their desire to combat an anti-Canadian campaign that is often launched by the U.S. companies who want to get the franchise.

Against this backdrop the question of the day, I think, is whether anything can be done to give small businesses a better chance to obtain significant equity interest in the remaining development of urban cable.

The committee may wish to consider legislative matters that would maintain a high level of competitiveness for cable franchises and provide incentives for greater small business participation. These incentives should make the local partnerships more attractive to the cable television companies and should also serve to counteract the rising tide of anti-rent-a-citizen.

Before I go into the incentives and competitive recommendations that I would like to recommend, one of the things that I heard earlier was a great deal of discussion about multiple franchising. That has existed, for example, in Canada for a long period of time. A lot of the cable companies share cities such as Toronto and other major cities. It is a concept that works, but I do not think it is one that this committee, I respectfully suggest, should spend a lot of time on.

I think you will have the National League of Cities coming in here arguing with this committee if it were to propose legislation that would dictate to the cities how they ought to divide up their franchises.

By way of an educational function it would be well advised to educate, perhaps from the U.S. Congress, local officials as to this opportunity. But in terms of legislation I do not think it is a Federal matter. I think it really ought to be left to the cities, and the cities' advisers today are very sophisticated and are making known to the city that there is the possibility in certain cities for multiple franchising.

But it is not a matter that I would recommend for Federal legislative action.

In terms of incentives that would help develop small business opportunities in urban areas and minority business opportunities I have several recommendations. They are not hard and fast recommendations, and I think they are more akin to things to think about and things to study and perhaps have hearings on with experts in the tax area, and perhaps jointly with other committees.

One suggestion is to revise the tax code to permit cable companies, and I mean the multiple system operators, the large companies, to consolidate income and losses of subsidiaries or joint ventures where there is greater than 20 percent local ownership.

As I stated before you can only consolidate your losses if you own 80 percent.

It might be possible to incentivize participation by women and minorities by linking such tax treatment to equity participation by women and minorities. This will incentivize multiple system operators to increase the percentage of local participation.

In other words, if I am a multiple system operator and I could consolidate the early startup losses against profits that I make in other systems, if I only own 60 percent in the system and 40 percent were owned by local entrepreneurs or local investors I would be more incentivized as a multiple system operator to have local participation to a greater extent than the traditional 20 percent.

A second incentive would be to reduce the capital gains tax to local investors if they happen to sell their stock back to the cable company after some suitable holding period. This would tend to encourage local financial as opposed to sweat-equity investments.

To the extent that urban builds are considered speculative this will incentivize local investors to seek out cable applicants as opposed to the other way around in order to acquire a piece of the action.

As you are probably aware at this stage, now the multiple system operator comes into the community and the multiple system operator seeks either people that will help them get the franchise or local investors. If the local investor knows that this, perhaps speculative investment that has a long return on it before there is going to be a profit on it, would give him or her a reduced capital gains with a reduced capital gains tax, he or she might be more interested in investing. And with the idea that he might be able to sell his stock back to the cable company, which is often traditional.

Often the local owners sell back, after some period of time, to the cable company and the cable company often ends up with more than its original 80 percent. And that is usually a way for somebody to not only make an investment but to make a return on the investment.

Mr. MITCHELL. I do not generally interrupt like this, but would it be the sell-back of stock within a specific time period?

Mr. **Brown**. Well, usually the sell-back of stock occurs between the years 5 and 10. And oftentimes the local investor has the option of putting the stock back or requesting the cable company to buy his stock back. That is not always the case.

Mr. **Mitchell**. It is obvious why I raise the question, someone would get a capital gains tax break, buys and then sells the stock back the next year.

Mr. **Brown**. That is why I said there should be some suitable holding period. I do not think that the Congress would want to encourage investments for short periods of time. I think they want to have real equity investments, but there has to be some way out of an investment as well. And usually it would be very hard to sell a minority interest of a cable company to another cable company, and so the logical buyer is the cable company itself, in which you are a minority shareholder.

My third suggestion is to provide incentives to MESBIC's and SBIC's that fund local cable partners. By reducing the capital gains taxes for the private investors that fund those MESBIC's and SBIC's this will first, provide more funding to MESBIC's and SBIC's from the private sector as opposed from the Government. That would have a direct effect of also providing more funds for the local investors in urban cable development.

It would also probably tend to increase the number of MESBIC's and SBIC's that participate in communications ventures.

The fourth suggestion is to increase the dollar amount or percentage allowance for MESBIC or SBIC investments in local cable funding because of the high cost of cable construction. To protect the MESBIC or SBIC against the instability of an increased allowance this could be tied to some measure of stability of the cable company to which the local investors are tied.

In other words, it could be some standard where the cable company had to have so much in assets backing its systems.

I would like to reemphasize the need to maintain a high degree of competition in the local franchising process. One way that you discussed earlier was to go for multiple franchises.

Another way is making sure that there are as many applicants as possible; the greater number of cable applicants the greater the chance for local participation in the process as investors.

A bill has been introduced in the House by Congressman Walgren, H.R. 4225, which would essentially ban Canadian ownership of cable systems in the United States. This would obviously benefit major U.S. cable companies because it would reduce the competition for franchises. Passage of this legislation would be harmful to municipalities, subscribers, and to local partners.

The choice of the cable franchisee has always been a local matter. Enactment of H.R. 4225 would limit the choice of local government, and that would be the choice of the officials closest to the people who receive cable service, and would require them to take service from only a U.S.-based company. This would shortchange the public by curtailing competition for cable franchises.

I suggest that the Canadian presence has benefited the franchising process, promoted competition, and ultimately enhanced levels of service to cable subscribers. The Canadian companies have a substantial track record of involving local participants in high percentages of ownership in their applications.

Legislation such as H.R. 4225 has been introduced previously and has not received positive support in the Congress. Additionally, the FCC considered the matter twice and has rejected the concept.

In conclusion I suggest that a partnership between the major cable companies and local investors is the only realistic method today for insuring the participation of small businesses in urban cable development. Maintaining an environment of maximum competition, encouraging the greatest number of applicants, insures the opportunity for substantial local investment.

Providing tax incentives to cable companies and to the MESBIC's and SBIC's will help accomplish greater local participation in cable applications. It will also encourage small business and minority investment opportunities in industries less capital intensive than cable, such as multipoint distribution facilities and satellite-fed master antenna systems or SMATV's.

Adoption of the above suggestions would create an environment where small and minority owned businesses are invited to participate in the capital-intensive arena of the urban build.

Thank you for this opportunity, Mr. Chairman.

Mr. MITCHELL. We thank you, especially, that you made some very, very specific recommendations to us. Your recommendations focus in on the tax area which, of course, is under the purview of the Ways and Means Committee of the House, but certainly this committee has worked with the Ways and Means Committee, and we will do so with reference to your recommendations in terms of tax changes.

You and several other witnesses have mentioned that cities, municipalities, and so forth, have their own specialists, their own consultants, to guide them through the labyrinth of getting cable TV off the ground in their area. We try to solve a problem, and we raise another one, and that is, who is the consultant? How sensitive is that consultant to the minority business community?

Do you have any knowledge about how cities select these consultants?

Mr. BROWN. There are not that many that exist. There are, some handful. Oftentimes there is a solicitation, there is a request for proposals by the cities for consultants to make an application to the city to be the consultant, and that sometimes involves the price of the job, a consideration of the person's experience, and what other cities they have consulted for.

I think there are also a lot of recommendations that come from cable companies. Usually a cable company appears first and says when are you going to do your franchise? You ought to get a consultant here.

Mr. MITCHELL. You put your finger right on the problem. I do not know that it exists, but it might develop.

Mr. BROWN. I think to anticipate your question, Mr. Chairman, there are a lot of independent consultants who are not tied to any cable company or have never even worked for a cable company or represented a cable company. So there are independent consultants.

As to their sensitivity to minority enterprise, I think it has got to work the other way around. The city has to say to the consultant, "One of the areas that we are very interested in is minority ownership or multiple franchises, and we want you to do that for us."

In other words, the job has to somewhat be described. There has to be somebody in the city that has some knowledge before they get the consultant to teach them. So, you know, there is kind of a circle that works there.

But I think there is enough knowledge in the cities today that they can at least instruct the consultant of major areas of concern, such as small business or minority business enterprise as being a factor to be considered.

Mr. MITCHELL. Thank you very much.

I have no further questions. It was just excellent testimony.

Mr. BROWN. Thank you, Mr. Chairman.

Mr. MITCHELL. We are running a little late and I intend to hear from all of the witnesses who remain. We have three more witnesses. Might I ask if any of those three witnesses are under severe time constraints?

Well, if it is all right with the remaining witnesses could we put Mr. Botein on? Is that OK with you?

Mr. BOTEIN. Yes; thank you.

Mr. MITCHELL. Might I also make one other suggestion since we have copies of prepared testimony; why don't you simply extract the salient points from your testimony and we will put the entire testimony in the record?

TESTIMONY OF MICHAEL BOTEIN, PROFESSOR OF LAW, AND DIRECTOR, COMMUNICATIONS MEDIA CENTER, NEW YORK LAW SCHOOL

Mr. BOTEIN. I fully appreciate the expeditious treatment, and as a quid pro quo I will not even mention my prepared statement because you have it.

Mr. MITCHELL. But it will be submitted in its entirety for the record.

Mr. BOTEIN. Thank you, sir.

Basically, I would like to touch briefly upon a couple of points that have been raised. I have followed cable ever since I got to law school, and I did my student law review note on cable television. Nobody knew what it was, of course. And I followed that up by working as a consultant at the FCC, and most recently as a consultant to a number of cities.

That raises the point which my former colleague at the FCC, Rick Brown, was trying to answer for you before; namely, sensitivity to minority and small business needs.

On the one hand, that sensitivity does have to come from a city. On the other hand, a consultant has to bring some of that to a city.

For example, I work with Community Telecommunications Services, which is part of the Office of Communication of the United Church of Christ. The office of communication has been a pioneer since the early sixties in media reform and in promoting minority rights. It litigated the *WLBT* case in Jackson, Miss. So, I guess if push came to shove and we had a client which clearly did not care about minority rights, women's rights, whatever, I am not sure what we would do. But that has never happened. We have always been able in a fairly upright manner to try to educate our clients about that kind of thing—hopefully to improve their performance and their concerns.

As indicated by a number of people, the real problem for small business is not so much that they need money. I have seen plenty of situations where a business with total assets of maybe $100,000—most of which are the owner's home—is able to march into a small- or medium-sized city of between 50,000 and 150,000 people, with a bank or insurance company commitment letter of $5 or $10 million. The reason for that, as Mr. Sutton said, is that money is green, and nobody much cares beyond the color of the money.

So, realistically, there is money available. There may be a problem in raising up-front money, for public relations efforts, legal counsel, or whatever. But certainly if you can give any assurance to a local, regional, or national bank that if you get this franchise that it will be profitable, you probably will get that bank commitment letter very, very quickly.

The real problem seems to be, from working on the other side as a consultant to cities, that the proposals which we get from small businesses are just not very well packaged. Very often this problem may take the simple form that they do not have the same glossy binders and artwork that the MSO's are spending a lot of money on; hopefully that is irrelevant, but maybe it is not.

In addition, there are a couple of substantive areas of concern here. For example, there is a very limited number of people qualified to do market research for cable operators and help them to design the economics of their system. A very common question is whether universal free service is viable or not. If you conclude that it is because of the demographics of the community, you might bid it. If you conclude that it is not, you will not bid it. But virtually all market research companies work directly for cable operators. It thus is very hard for a small business to get that kind of expertise.

Another area is engineering. Most really great cable engineers work for cable companies, and as a result cannot work for a small business even if that small business has some terrific ideas. So very often a small business proposal simply does not stack up in engineering terms, as compared to one from an MSO. It is not that the small business is not willing to give more; it simply does not have access to people who can design more.

So, realistically, I think the problem is getting the skills in there, not getting the money in there, although obviously the money in the long run might help.

In my prepared statement I suggested a number of alternatives for encouraging MSO/small business partnerships, and some of them Rick Brown has gone over before; for example, grants, tax credits, investment tax credits, industrial revenue bonds, and the like.

Basically, the bottom-line question here is, Can you, or whomever you delegate this to, make it profitable for an MSO to take in a local partner? It is very simple to compute that. An MSO will look at two questions.

The first question is: If I go into the existing private money market and have to borrow 10-year money at 21 percent, which is about the going rate for a cable operator today, how much profit will I make 5 years out when the system hits maturity, and how much profit will I continue to make?

The second question is: If I sell—not give—20, 30, 40, or 50 percent of my system to a local, hopefully minority owned partner that will obviously decrease my share of the revenues, what will my total profit be?

Now I may very well as an MSO be willing to have a local partner if the result is to get me, let us say, 11-percent money through industrial revenue bonds or something less than 21-percent money. But my central focus is on 10, 15, 20 years down the line, when the system eventually must be rebuilt. How do I fare better? How do I make more net profit? Is it by going it on my own with high interest money and no subsidies and no grants? Or is it by taking in a local partner? And that is really the consideration which has to be worked out.

It can be done. We can take the various pro forma statements—statements that have been submitted in hundreds of communities around the country—and figure it out. But this inquiry would take some time and, to be honest, the people who are best qualified to do it are the MSO's.

Finally, just one short point. A lot of people have mentioned S. 898, which obviously is not the subject of this hearing, and is not before this committee right now. However, there are two important points about S. 898.

First, S. 898 would reduce local control of cable television, a point made by Mayor Royer very well.

Second, one of the avenues down which small businesses and minority businesses might wish to go—and indeed down which some minority businesses have gone already—is program production.

Obviously, if you have a product, you need a place to show it. But S. 898 would do away with leased access channels. There would be no way that an entrepreneur could get on a cable system or would have any right to get on a cable system under S. 898.

It is a difficult, or perhaps impossible task to predict at this point what the reaction of cable operators would be under S. 898. But certainly if a cable operator does not have to give leased access, you could be foreclosing a very substantial avenue of program production for small and minority owned businesses.

On that point—which is, I guess, technically an irrelevant point—I will rest.

Thank you.

Mr. MITCHELL. No, it is very, very relevant. Again, it is very disquieting to me.

Minorities now are just about frozen out of ownership in the cities because of the rate at which it has developed. The opportunity is there, some say for us to get into the programing aspect of it, but on the one side you have the interlock system that I had talked about before which will make it more difficult for us to get in, and indeed if you do away with leased access then we are frozen out, at least theoretically. Frozen out of the programing aspect.

Mr. BOTEIN. I think that while theoretically we have seen a trend toward horizontal integration in this field, you may very well find that most MSO's own one or more satellite-fed services, and that they may prefer their satellite-fed service to a locally or minority produced program.

Mr. MITCHELL. The one salient point in your testimony is, as I read it, that the Federal Government, the Congress should really stay pretty much away from this, except in tax incentive areas, that you would have a great deal of concern about Federal intervention, that it is essentially a local effort. Is that the correct understanding that I have?

Mr. BOTEIN. I think that we have seen so far that the FCC has not been terribly effective.

Mr. MITCHELL. Well, I would have a great deal of hesitancy in letting this particular FCC intervene significantly.

Mr. BOTEIN. There also is, of course, the problem that we are dealing here with potential first amendment issues, speech-related things. It is probably better to do it indirectly rather than directly.

Mr. MITCHELL. Thank you very much.

I hope you will make your appointment in New York.

Mr. BOTEIN. I hope so, too. Thank you very much, sir.

[Mr Botein's prepared statement and attachment follow:]

PREPARED STATEMENT OF MICHAEL BOTEIN, PROFESSOR OF LAW, AND DIRECTOR, COMMUNICATIONS MEDIA CENTER, NEW YORK LAW SCHOOL

I am pleased to appear before the committee today, to discuss the role of small and minority-owned businesses in the cable television industry—an issue which has received comparatively little attention. I approach the topic from several different perspectives. As an academic, I have studied and written about the legal and regulatory aspects of cable television for more than a decade.[1] As a lawyer, I have represented cities involved in the cable television franchising process ranging from Atlanta, Georgia to Kalamazoo, Michigan.[2] Finally, I am somewhat of a "cable kibbitzer" in following cable television franchising on my home ground—New York City.[3]

Involvement of small businesses in the cable television industry serves a number of different goals. Almost by definition, small businesses are local businesses; they thus can respond to local interests very effectively. Moreover, small businesses are often also minority-owned businesses; involvement of small businesses in cable television thus often increases minority participation in ownership and control of the mass media—an avowed goal of the federal government for more than a decade.[4] Finally, widespread involvement of small businesses in cable television also would prevent any undue concentration of control of cable television systems—an issue which has aroused concern by the Federal Communications Commission (FCC) and other federal agencies for the last decade.

At a comparatively early point in its history, of course, the cable industry was almost dominated by "mom and pop" firms. During the early part of the 1970's, however, the bottom effectively fell out of the capital market for cable television and an increasingly large number of MSOs began to enter the marketplace. The trend of the early 1970's thus has largely reversed itself; the vast majority of cable operators today are MSOs as opposed to small businesses. The original "community antenna television" of the 1960's evolved into the "cable television" of the 1970's—perhaps with a significant loss in "community."

This evolution reflects a number of different phenomena. Interestingly enough, however, virtually none of these developments appears to result directly from problems in raising venture capital.

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[1] E.g., M. Botein, *Access to Cable Television*, 57 Cornell L. Rev. 419 (1972).

[2] E.g., M. Botein & B. Park, *What To Do When Cable Comes to Town* (1980).

[3] E.g., R. Friedlander & M. Botein, *The Process of Cable Television Franchising: A New York City Case Study* (1980).

[4] Commission on Civil Disorders, *Report* 382 et. seq. (1968).

To be sure, the cost of wiring a typical 50,000 person suburb ranges between three and five million dollars. But debt financing in these and even much higher amounts is not as difficult to obtain as it was a decade ago. As the cable television industry has proven its financial stability, regional as well as local banks, insurance companies, and other investors have shown a willingness—and at times even a fervor—to make long-term debt commitments to any company with an apparently profitable franchise in hand. Indeed, lending institutions often issue commitment letters to any franchise applicant with minimal qualifications—including new and small businesses—conditioned upon award of a franchise.

Instead, the real problem for most small businesses in bidding for cable television franchises seems to lie in their lack of expertise in planning, engineering, and packaging their applications. This situation may seem anomolous, since small businesses often have better local ties than MSO's. All too often, however, small, local, or minority-owned firms lack in a variety of skills necessary to make credible franchise applications.

Small businesses need engineering assistance in planning sophisticated and attractive technological proposals. They also need marketing expertise in order to forecast the demand for their services in particular communities. They need accountants and economists to forecast the costs and revenues of a system. They need public relations experts to package their bids in attractive ways. And, last but not least, they need lawyers to counsel them on federal, state, and local legal questions as well as to assist them in drafting and negotiating franchise agreements. At the present time there is significant scarcity of professionals with cable television experience in these fields, however, and many of the real experts work for MSO's.

Mere infusions of capital into small businesses may not significantly increase the number of small businesses in the cable industry. As indicated above, the problem seems to lie in human, not financial capital.

The Federal government presumably could develop or provide the skills which many small businesses lack. Financial assistance to small businesses to hire consultants, however, seems to have little use; as noted above, there simply are not many consultants available in the first place. To be sure, the federal government might attempt to train a new body of professionals to serve small businesses in the cable television industry, and perhaps even make them available through a body analogous to the Legal Services Corporation. Even aside from political considerations, however, it seems questionable whether a governmental body could teach relevant skills quickly and effectively enough to have any substantial impact.

Perhaps the best approach thus would be to create financial incentives for MSOs to work with small businesses as partners, joint-venturers, or equity owners. There obviously are many ways in which the federal government could make this type of cooperation financially attractive to MSOs. On a very practical level, the key determinant presumably would be whether an MSO would maximize its revenues by retaining complete ownership over a system—and thus its long-run revenues—or by taking advantage of federally funded incentives. The relationship between the two obviously would require close scrutiny and periodic re-examination.

First, it could make outright grants to cable systems with a certain level of local, small business participation, perhaps somewhat along the lines of the National Telecommunications and Information Administration's planning grants for cities to develop local program production facilities. In addition, the Small Business Administration could make or guarantee loans at below-market interest rates. Alternatively, local governments might be allowed to issue tax-exempt bonds to provide capital for construction of a cable television system as is currently the case with industrial revenue bonds. Or, the Internal Revenue Code might give cable operators favorable treatment in terms of depreciation allowances and investment tax credits. Finally, and most controversially, the Congress could preempt on a selective basis the jurisdiction of state and/or local government authorities to impose requirements such as franchise fees, access channels, local origination programming, or payments for program production; this approach presumably would follow on a selective basis of the massive "deregulation" of cable by the FCC as well as some state governments.

Each of these above alternatives naturally raises a whole host of problems. For example, restriction of grant or tax relief programs to MSO/small business partnerships obviously would create an administrative thicket. In addition to these particularized questions, however, there is a central problem of insuring that any of these approaches resulted in bona fide MSO/small business cooperation. Traditional types of "rent-a-citizen" programs to curry local political favor have raised a host of problems. And if there are problems with current rent-a-citizen practices, presumably there would be geometrically more with those subsidized by the federal government.

On the other hand, the Congress is hardly in a position to pass laws—and a federal agency is hardly in a position to promulgate regulations—to scrutinize every MSO/small business partnership to insure its legitimacy. After all, the FCC is retreating from regulation of cable television at full speed, and neither it nor any other federal agency would be very enthusiastic about examining in detail hundreds or perhaps even thousands of cable systems' internal business practices. Nevertheless, the Committee might begin to develop some guidelines for use by it, the Congress, or an appropriate agency to use in determining whether to grant a subsidy, tax advantage, or other financial incentive in order to encourage cooperation between small businesses and MSOs. Although the subject obviously needs considerably more careful study, it may be useful to suggest a few general propositions, which could be applied in a reasonably mechanical and thus administratively feasible fashion.

First, Congress might require a minimum amount of participation by a local small business in order to qualify for any type of financial benefit. After all, a small business presumably gains very little if it owns only a few percent of a system. In addition, of course, the amount of any federal financial incentive presumably would need to be related to the amount of participation by a local small business.

Second, it probably would be necessary to insure that the initial contractual and other relationships were between an MSO and a small business did not give an MSO any buy-out options, except perhaps after the system had been in operation for a substantial length of time and at a fair market value.

Third, the Congress might require a small business to acquire its interest for its allocable share of paid-in capital or a commitment to pay such an allocable share upon grant of a franchise. (In most cases it would be relatively simple to determine at least the cost of building a system, since franchise applicants generally disclose this in their franchise bids.) This type of provision naturally would prevent the most obnoxious forms of "rent-a-citizen" practices since it would prevent an influential figure from getting a free ride. To be sure, it might be wise to allow bartering of services—such as engineering, legal, accounting, and other skills—instead of paid-in capital; in such a case, however, an applicant for federal benefits would need to establish the fair market value of each hour of services as well as the total number of hours.

Finally, it might be wise to require that at least one owner or director of a small business sit on the board of any corporation created to run a particular cable system. This presumably would give a small business representative direct input into, as well as substantial information about, the functioning of a local cable system, and thus encourage the goals of both local and minority ownership.

CONCLUSION

As noted above, these general propositions obviously need substantial refinement. Nevertheless, they may suggest the dimensions of the issues and directions for the Committee. With further analysis, the Committee can help to put some "community" back into cable television.

REQUEST FOR PROPOSALS

The purpose of this Request for Proposals ("RFP") is to seek qualified applicants to provide cable television service to the citizens of Hazel Park, Michigan, under a franchise agreement with the City. This RFP contains information and instructions relating to the preparation and filing of proposals, and has been issued by authority of the City Council of Hazel Park.

1. FILING OF PROPOSALS

Twenty-five (25) copies of applicant's proposal shall be submitted in sealed envelopes with the caption:

"Cable Television Proposal"

addressed to:

Dan W. Potter, City Manager
City of Hazel Park
111 E. Nine Mile Road
Hazel Park, Michigan 48030

Proposals may be filed in person or by mail and will be accepted at the Office of the City Clerk until Friday, June 19, 1981. The City reserves the right to extend or reopen the deadline.

2. FORM OF PROPOSALS

The City is requesting three types of information: a proposed franchise agreement and accompanying agreements; certain FCC reports; and selected other information. Applicants should submit the following documents:

I. *Proposed Franchise Agreement and Accompanying Agreements.* Applicants shall complete the proposed franchise agreement and accompanying agreements included as Part I of this RFP by filling in the items left blank therein and making such additions, deletions and modifications in the contract language as are desired. Hyphens (- - - - - - -) shall be inserted through all deleted language and underlines (_________) shall be placed beneath all added or substituted language. The applicant's Statement of Technical Standards and Specifications should be annexed as Appendix A to the proposed franchise agreement. The applicant's Affirmative Action Program should be annexed as Appendix B to the proposed franchise agreement. Three (3) copies of the proposed franchise agreement and accompanying agreements, completed as set forth above and included as part of an applicant's proposal, shall be executed on behalf of the applicant and submitted to the City together with the required copies of its proposal.

II. *FCC Reports.* Applicants shall submit copies of FCC Forms 325, 326, and 395 for all systems in which they (or any affiliated company) have or have had any financial interest, direct or indirect, for the three most recent years for which such forms were filed. If an applicant (or any affiliated company) has not filed any or all of such reports, it shall submit an explanation of why such reports were not filed, together with pro forma reports on FCC Forms 325, 326, and 395 for said three-year period. Applicants need submit only five (5) copies of each report required hereby.

III. *Other Information.* Applicants shall submit additional information responsive to the questions and using the forms provided in Part III of this RFP.

3. CLARIFICATION OF PROPOSALS

In the event that an applicant has any question as to any of the terms, conditions, or provisions of this RFP, the applicant may request information or clarification thereof by submitting such request in writing simultaneously to:

Dan W. Potter, City Manager
City of Hazel Park
111 E. Nine Mile Road
Hazel Park, Michigan 48030

and

Raymond V. Petrauskas, City Attorney
Hazel Park City Hall
111 E. Nine Mile Road
Hazel Park, Michigan 48030

and

David M. Rice, Esq.
57 Worth Street
New York, New York 10013

Such request for information must be submitted no later than twenty (20) days prior to the deadline for filing applications. The City Attorney will respond in writing to such request as promptly as possible, with a copy to all other known applicants. Such response shall be sent only to known applicants who have been supplied applications. No other interpretation by any other person, whether oral or in written form, shall be binding upon the City. The applicant, by submitting its application, shall be deemed to acknowledge that it has no further questions with respect to the specifications hereof, and shall have no basis for withdrawal or modification of its proposal on the basis of misunderstanding.

Except as herein provided, applicants, prospective applicants, and their representatives are urged to refrain from contact with the City's offficials, including elected officials, City Manager, and Librarian, and the City's cable television consultants.

4, ADDITIONAL INFORMATION AND REQUIREMENTS

At the City's request, an applicant shall provide such other facts as may serve to reflect on the materiality of the application, or the quality, character and ability of the applicant, its principals, affiliates, parents and subsidiaries. Failure to provide the requested information shall be cause for rejection of the applicant's proposal.

Submission of a proposal in response to this RFP constitutes an irrevocable offer until midnight, local time, December 31, 1981. The City of Hazel Park reserves the right to reject any and all proposals and the right to negotiate directly with any and all applicants concerning any matter related hereto. The City further reserves the right to change this RFP at any time, and will notify persons who have registered with the City Manager of Hazel Park of all such changes.

5. UNSOLICITED INFORMATION

No applicant shall file any information not specifically requested either by this RFP or by subsequent order of the City.

6. APPLICATION FEE

The application shall be accompanied by a certified check, payable to the order of "City of Hazel Park," in the amount of three thousand dollars ($3,000.00), representing a non-refundable application fee which shall be applied toward reimbursing the City for its direct and indirect expenses incurred in the process of awarding a franchise. In addition to said fee, the Grantee will be required to pay, upon execution of a franchise agreement, a further non-refundable fee to reimburse the City for any such expenses in excess of the amounts received from application fees pursuant hereto.

7. ADDITIONAL INSTRUCTIONS AND INFORMATION

Applicants are strongly encouraged to develop and submit innovative proposals for a highly advanced system consistent with the current and changing state of the art. Accordingly, applicants are encouraged to propose such services, facilities and configurations beyond those included in the proposed franchise agreement as they deem appropriate. Applicants thus may, but are not required to, propose broadcast, cablecast and other services including, but not limited to, such services as institutional communications "loops," systems and networks, viewdata, teletext, data transfer, funds transfer, shopping, fire and burglar alarm, medical alert, and traffic signal control. In addition, applicants are advised that the City is in the process of installing a new remote-reading water meter system; applicants are specifically encouraged to submit proposals for use of the cable system for meter reading.

Applicants are advised that the proposed franchise agreement and accompanying agreements included as Part I of this RFP are intended as suggestions to applicants rather than as requirements to which applicants must adhere. As stated above, applicants are free to make "such additions, deletions and modifications in the contract language as are desired." All proposals must, however, be submitted in the form stipulated in this RFP, and alternative proposal forms are neither desired, nor will they be considered by the City.

Applicants are advised that the City will look with extreme disfavor in the selection process upon any ownership arrangement under which (a) any holder of an equity interest in an applicant has acquired or may hereafter acquire such interest for less than its full value; or (b) under which any party has the right (whether pursuant to written agreement or any oral agreement or understanding) to require the purchase, sale, reacquisition, or other transfer of such interest at a price greater than that paid to applicant at the time of the initial acquisition of such interest; or (c) under which the distribution or allocation of profits and losses does not fairly reflect the investment of the holder of such interest.

Applicants are further advised that the City has conducted an "ascertainment" in order to determine how a cable television system can best be used to serve the needs of various segments of the Hazel Park community and of the public at large. Prospective applicants may inspect the materials so gathered during regular business hours at the office of the City Clerk, City of Hazel Park, 111 E. Nine Mile Road, Hazel Park, Michigan. In addition, prospective applicants may obtain from that office certain demographic and statistical information descriptive of the City and its population.

Mr. MITCHELL. Mr. Herbert Wilkins is president of Syncom Capital Corp., and who I am honored to call a friend and a fellow warrior of long standing in this whole area of minority enterprise development.

Thank you for taking time to be with us.

TESTIMONY OF HERBERT P. WILKINS, MEMBER, BOARD OF DIRECTORS, AND TREASURER, AMERICAN ASSOCIATION OF MINORITY ENTERPRISE SMALL BUSINESS INVESTMENT COMPANIES, AND PRESIDENT, SYNCOM CAPITAL CORP.

Mr. WILKINS. Mr. Chairman, I would like to thank you for the opportunity for allowing me to come before you today and to briefly summarize the content of my prepared statement.

In developing testimony for the hearing this morning I ran back over in my mind the battles that I have, as president of Syncom, which is a MESBIC, fought during the last 4½ years, in support of minority ownership of electronic media properties. And that effort and battle has been substantial.

Nonetheless, Syncom I think is probably a glaring example of all that is needed to be successful for minorities in cable, television and radio, as far as that goes. Just an effort and a desire and somebody willing to work is all that it takes to own, to build, and to reap the rewards of cable in America's cities.

I take issue with presenters this morning who outlined what appears to be a withering away of opportunities for entrepreneurs in America's cities. Yet to be cabled in America, and yet to be bid, are those cities in this country which contain the majority of the black population: Chicago; Washington; Baltimore; Detroit; Cleveland; St. Louis; and on and on. They are still there, they are a territory to be conquered, and if we, as minorities, allow those cities to go to MSO's without significant ownership on our part, we will have missed another train.

I would just like to add that in the 3 years that we have been actively involved in cable financing we have financed systems which have approximately 200,000 cable homes ranging in size from 16,000 in East Cleveland, Ohio, to 115,000 homes in Newark, N.J.

We were able to finance those systems by demonstrating to the municipalities and those institutions which provide capital to build such systems that minorities can indeed build these systems, that they can indeed operate them, and they can do anything that anyone else can do with respect to cable. There is no magic about the operation of a cable system. There is no magic in the technical operations of a cable system. It is a very, very simplistic electronic system as it is operated in this country today.

When people talk about electronic funds transfer or electronic mail and the like they are talking about futures which are not operational in the bulk of the systems in this country. As a matter of fact the bulk of the systems in this country are still 12-channel systems, still absent of converters and absent of satellites for receiving programing from outside sources.

This leads me to another point and that is in an industry which is rapidly becoming the focal point for mass media we as individuals ought to consider seriously whether or not we should pursue diligently an effort to insure that there is some degree of regulation over cable.

In my prepared statement I cite an example of a Teleprompter refusal to carry a signal in southern New Jersey even though FCC rules and regulations require the carriage of that signal. It occurred to me because I am involved in that particular situation in that the signal is not being carried by Teleprompter, is a black owned television station, one that we financed, it occurred to me that a company like Teleprompter and other MSO's who refuse to upgrade their systems to carry the number of available channels of programing are in fact not just cable operators, they are cable programers.

And unlike television programers and television station owners they are not regulated. They can deny you access to carriage of information that is significant to the public that is in the public interest and convenience merely by telling you that they have no room to carry your signal.

As the number of program channels increases, up from the current 100 or so available to be carried on cable systems to 200, which should be readily available by 1985, these system operators will clearly then be programers. They will tell who will be able to run on or to air programing over their channels.

You mentioned and other presenters mentioned also the need for some involvement by minorities in programing. I think that is a training that is passing us by as well. For now the cost of a transponder has gone from a mere $1 million a year or so ago to $15 million. That is what the current cost is for a transponder on a satellite that will be oriented in a way so that most cable systems will be able to receive the signal.

Not only are there too few transponders at too high a price, these new satellites, some of whom will be condominium satellites, where people will be able to negotiate separate contracts free of FCC regulation, to acquire not one or two but as many transponders as they can come up with the money for.

The bidding system and/or the first-in-line system that dominated in the transponder field in the early years, 1974, 1975, 1976, is gone. It is now who has the most money and who can wheel and deal the fastest to get as many transponders to block competition as possible. A minority entrepreneur has no chance of acquiring the kinds of capital that it takes to first acquire the transponder and then to develop the programing. And that cost is substantial, again.

And once he develops the programing he is back in the game of soliciting advertising revenue, and we all know where that goes.

So that the road does not look good. The road can be improved substantially, to the extent that minorities own and control a substantial number of cable TV homes. That is the only way that we will have access to the development of programing for our own communities in the future. It is not if we just decide to go to Cox, to go to TCI or somebody else and ask them to carry our show. That is not what will get us up on a satellite. It is when we own and control and we buy our own programing. That is when we will get programing on a satellite.

I believe that in the cities right now we face an incredible battle. We are competing for the ownership of media against opinions formulated by companies who are also owners of media and who also desire additional cable television franchises. The same companies, the Los Angeles Times, the New York Times, the Chicago Sun, and the like all tend to formulate public opinion about minority ownership of cable and other media. Yet these are the same companies that we have to compete with in a cable bidding process. Something is not fair there.

On the other hand we also in most cities have to contend with a consultant who was brought in by a municipality, generally at the urging of an MSO, who evaluates the cable bids. That consultant in turn is generally a nonprofit who derives a substantial part of its revenue from contributions made by whom? The cable companies, the newspapers, and the like.

These same consultants then render an "impartial" decision as to who is most qualified to own and operate the cable television system in that community. I think something is wrong.

Mr. MITCHELL. You meant "impartial" in quotes, didn't you.

Mr. WILKINS. I sure did.

A question was asked about whether or not minorities could stack up in the bidding process in preparing proposals for municipalities. Syncom has been involved in that process and I assure you there is no magic to preparing a proposal and having it as good as anybody else can present. The talent that goes into putting one together is acquired talent, the MSO's acquire that talent; they hire employees, the employees work on nothing but putting together proposals.

Minority entrepreneurs, merely, as Mr. Sutton said earlier, merely need to go out and acquire the talent, marshal the resources, and move off toward the bidding process. To back off from that will be to deny ourselves an opportunity of a lifetime. We have missed out on so many other opportunities that to lose out on this, and particularly because this is an opportunity that exists in our own turf. Most of the cities that I mentioned earlier are cities where minorities control at least half of the city council and are the majority of the population.

In those cities, if we do not come out with anything less than 50 percent I would be surprised, and I would say that we have done ourselves a great injustice.

I leave the floor open for questions.

[Mr. Wilkins' prepared statement follows:]

PREPARED STATEMENT OF HERBERT P. WILKINS, MEMBER OF THE BOARD OF DIRECTORS AND TREASURER, AMERICAN ASSOCIATION OF MINORITY ENTERPRISE SMALL BUSINESS INVESTMENT COMPANIES (AAMESBIC) AND PRESIDENT, SYNCOM CAPITAL CORP.

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you today.

My name is Herbert P. Wilkins and I am here today representing the American Association of Minority Enterprise Small Business Investment Companies (AAMESBIC) and the Syncom Capital Corporation. I presently serve as a Member of the Board of Directors and Treasurer of the Association, and am President of Syncom Capital Corporation.

Syncom Capital Corporation is perhaps the most active minority oriented venture company involved in the financing of minority-owned cable TV companies. To date, Syncom has financed four cable systems which include KBLE Ohio, Inc., the nation's first Black owned and operated cable TV company, serving 24,000 homes in Columbus, Ohio; Telecable Broadcasting of America, Inc., which is now under construction and will serve 16,000 homes in East Cleveland, Ohio; Connection Communications Corporation, a cable TV system under construction in Newark, New Jersey, which will serve 115,000 homes; and Buena Vista Telecommunication, Inc., which is presently constructing a cable TV system in East Los Angeles, California that will serve 30,000 homes when fully built. Syncom is extremely proud of its accomplishments in the financing of these minority owned systems.

The future of small and minority owned cable TV businesses may not be as bright as the past. The cable TV industry was created by the entrepreneurial efforts of hundreds of small businesses in rural communities throughout the country. However, during the last five years, the cable industry has come of age and with this coming, has come the need for sophistication in dealing with political subdivisions, sources of capital and the programming and engineering revolution which has brought forward the interest of big business. The potential wealth of cable and the technological future it holds for America is now the business of big business. Minority businesses are slowly loosing the opportunity to develop cable systems to the large well financed communications conglomerates.

How has the development of cable in America changed from a business of many small companies to one of a few large companies, in a matter of ten years? A number of factors have contributed, but the deliberate effort of large companies to force smaller ones out of the cable industry is perhaps the most significant. More specifically, small and minority companies are limited in their ability to compete for cable TV franchises because we have moved from the cabling of small rural and suburban communities to the large urban areas of America. Small and minority companies have found there are absolute limits to the amount of capital that they can raise to develop a large single system urban franchise. Lack of capital is the problem of the small and/or minority company bidding for a citywide urban franchise. Additionally, large companies have the staffs to lobby within the large cities to insure the city ordinances call for a single franchise. Most cable operators are so aware of their competitive strength when a city ordinance requires a single franchise that the phrase "Single Franchise" is now acceptable as a cable industry "buzz word" meaning small and minority companies need not apply. For the small and minority cable company, the single franchise or multiple franchise issue in most large cities is the beginning of the battle. If the ordinance calls for single franchise, small and minority companies are out of the competition, primarily because they cannot raise the capital required to construct a citywide single system franchise.

Is a single franchise preferable to multiple franchises in America's cities? Most cities are now more inclined to adopt a single franchise. They believe it will insure uniform service among local organizations, public access and government channels and provide greater ease in regulating rates charged for services, with uniform service rates citywide. The bidding process, itself, is simplified when there is only one franchise to award.

What are the advantages of smaller multiple franchises? First, it allows many companies to bid, small as well as large, so the types of service the city can have for its citizens can vary by the number of companies who bid. More importantly, it allows local and smaller companies to bid and offer services based upon first-hand knowledge of the community and its needs. The mere fact the city has provided for multiple franchises does not preempt it from awarding all of the franchises to a single bidder. However, the city is able to see what services large and small cable companies are prepared to offer.

Should the city elect to award its multiple franchises to more than one company, they will have introduced into the operation of cable an element of competition that might not otherwise be evident. As a result of differences in programming and service to subscribers by several companies, the city's regulatory body can use these differences in performance to insure that all operators provide the highest quality of service. The city, through the franchise process, can mandate that all franchises be interconnected and the access, local origination and government channels on all systems be carried on the same frequency and that these channels be carried citywide. Further, the city can mandate standard technical performance specifications for all franchise operators so that service and the number of channels are uniform from franchise to franchise. What most cities should be aware of is that as the number of channels of programming available for coverage by the cable system increases and the number of channels within a system that can be programmed remain constant, the cable operator is then in fact a cable TV programmer. There are now in excess of 100 different channels that can be carried by cable. The vast majority of cable systems have only 12 channels and even in new systems most have only 54 activated channels. By 1985, there will be over 200 channels of programming available for carriage by cable systems. By then, most cable operators will be programming their systems, deciding which programs will or will not be carried. What the cities need to insure themselves of, in the absence of FCC regulations of cable system operators programming activities, is whether the programming being carried is in the interest and convenience of the public. Can a city rely on a major U.S. Corporation who is more interested in increasing the bottom line profit to insure that its stock price stays high to provide programming that is in the public interest and convenience? Perhaps a smaller company that has a strong local ownership base would be more responsible.

To support the conclusion above, I would like to refer to a situation within the television industry which should illustrate the point. Until a recently announced sale, channel 5, WCVB in Boston, was one of the few locally owned VHF television stations in a major U.S. market. As a locally and privately owned TV station, WCVB won numerous awards for the quality of its local programming. The Station gained a nationwide reputation for the quality of its local programming. WCVB was able to do this because many years ago the FCC revoked the license of the prior owner for its failure to provide programming that was in the public interest and convenience. The FCC then awarded the license for the station to a local group, which the FCC felt would be more responsive to local programming interest.

Another example of the impact of local ownership on the quality of programming occurred within the cable TV industry. Last year, KBLE Ohio, Inc., a Black owned and operated cable TV company financed by Syncom was ranked 23rd among 4,600 cable TV systems nationally for the quality of its locally originated programming. KBLE is locally owned.

In contrast, I would like to cite a situation where Teleprompter, a large Multiple System Operator (MSO) which was recently acquired by Westinghouse, chose the bottom line over the interest and convenience of the citizens it serves. In July 1981, one of the few television stations and the only station serving all of Southern New Jersey went on the air. Teleprompter serves many of the communities in Southern New Jersey with cable TV service. Teleprompter has operated an inferior 12 channel system. Because it has elected not to upgrade its service with more channel capacity, it has not become just a cable TV operator, but is, instead, a cable TV programmer carefully selecting among the 100 plus program channels it alone chooses for its subscribers in southern New Jersey to see.

As a cable system operator, Teleprompter is required by FCC regulations to carry the signal of all standard broadcast TV stations placing at least a Grade A signal over its cable systems. The new station in Southern New Jersey, Channel 65, in Vineland, should be carried by all of Teleprompter's Southern New Jersey systems. However, several weeks ago, Teleprompter, in a press release, announced that it did not intend to carry this station. Teleprompter's refusal to carry Channel 65 is a violation of FCC rules. However, here is Westinghouse, the new owner of Teleprompter, using its vast resources to defy even the FCC. Westinghouse obviously believes that in a weakly regulated industry and as the new owner of Teleprompter, it will program Teleprompter's systems the way it wants.

If such a large MSO as Teleprompter/Westinghouse, as a cable programmer, is prepared to defy the rules and regulations of the FCC, what would a similar giant do if it has the franchise for Chicago or some other major market and programming of significant interest was desired by subscribers but withheld because of the decision of a faceless corporation whose headquarters offices were hundreds of miles away in New York, Denver, or Los Angeles. Could owners of a locally owned system as members of the rotary club and other similar organizations who are familiar with local political considerations and citizens needs deny the local community the programming that it wants? I think not!

As outlined above, perhaps the most significant factor affecting small and minority business ownership of cable in the future is the issue of single vs. multiple franchising in the nation's large cities. Of almost equal importance is the problem of raising the capital required to construct and operate a cable TV system. The minority owned cable systems financed by Syncom have ranged in capital requirements from $2 to $10 million. In the context of minority owned companies, these are relatively large financings. All of these financings have been difficult to complete. Without Syncom's experience in the financing of minority owned communications companies, I do not believe that any of these companies would have been financed. It is also evident that without the MESBIC industry, these deals probably never would have found a source of equity funding. This is especially true of the larger deals, which require the syndication of the equity among several venture companies long before a commitment is received from a senior lender for long-term debt.

Most minority companies experience great difficulty in securing long term debt. Most banks and other lending institutions view the financing of a new cable built by a small or minority company as an unsecured and hence, risky loan. Since there is generally little cashflow generated by newly constructed systems in their early years, the banks have little assurance that the loan itself can be repaid. Hence, if they have an interest in financing the building of the system, their lending criteria tends to be stringent. Debt to equity ratios will have to be in the range of 1:1 to not more than 2:1. Interest during the construction phase estimated at maximum rates must be fully funded and/or guaranteed by a third party. The funding advances during construction will normally be based upon the company meeting all of the banks funding criteria, i.e., miles of plants built, subscribers added and cost to-date incurred, being within projected parameters. Most small and/or minority companies fail to meet one or more of these criteria for senior long-term debt funding, regardless of the size of the financing package. Therefore, it is apparent that as cable franchising moves into larger cities, the degree of difficulty of minority and small companies obtaining large amounts of financing required to build a system will increase in direct proportion to the size of the franchise territory.

I believe it is safe to say the maximum size of financing a small or minority concern can expect to raise without taking on a cable partner is $10 million. Financing larger than that amount will, I am sure, require a joint venture effort between the small or minority company and a large cable MSO. With such joint ventures, the minority or small cable operator will usually lose the opportunity to control the cable venture.

In addition to the lack of capital, minority firms lack managerial talent to manage a franchise. This lack of experience has prevented many small companies from recent involvement in an industry where only a few short years ago no one had any experience. The problem of inexperience can, however, be overcome. Many small companies can and do employ a turnkey contractor to build the system so that it meets required technical specifications. Other companies retain management through a management contract with an MSO or other firms specializing in cable system management. Most small and/or minority firms will retain either a turnkey contractor to build the system and/or a professional management firm to run its day-to-day management. MSO's obtain their management from the ranks of their employees, few of which are minority.

As a result of the foregoing, it is clear the small and minority company does not have a good chance of participating in the future development of cable in America's cities unless more cities choose the smaller multiple franchise option and, also, unless access to equity and long-term debt markets is improved.

During the last two years, many MSOs and small and minority firms have formed joint development efforts for cable TV franchises. These have usually taken the form of the traditional 80/20 ownership structure. The MSO will own 80 percent of the venture and the local company 20 percent. The process of combining the local company and the MSO has developed as a politically expedient way for the MSO to gain a local partner who has "political pull" to insure the winning of the franchise. After the franchise is awarded, the 20 percent owner will have very little involvement in the system. For all practical purposes, the 20 percent equity holder is a passive investor.

There are other alternative ownership structures that are now being developed. Some are 50/50 joint ventures such as the one CTI, a large cable MSO, has done with a local group in Gary, Indiana. Syncom believes that such joint ventures—where the small or minority company owns 50 percent or more of the franchise, are possible. We encourage these relationships, but only to the extent they are honest arrangements and the local company is truly an active operating partner. Many cable companies now view less than 51 percent ownerships as a practical alternative if it increases the chance of winning a franchise. Using as the rationale that it is better to have a small piece of a cable franchise than 100 percent of a losing bid. This is a relatively new development and as a result, represents the best chance for small and minority companies to survive the current cable franchising battle.

How can the chances for small and minority companies be improved for cable system ownership:

1. SBA can allow MESBICs and regular SBICs to participate in the financing of cable by waiving the 30 and 20 percent respectively, lending limits for cable TV financing.
2. SBA should allow MESBIC to finance cable systems where the minority group owns less than the 51 percent of the equity, but has substantial participation in the day-to-day management of the firm.

3. Cities must be made aware of the need to have varied and local ownership interest in the monoploy franchises they award to insure that the public interest and convenience is balanced against the bottom line desire of publicly-owned cable TV system operations.

Cities should be encouraged to develop ordinances for more than one franchise especially in cities with more than 200,000 homes.

Mr. MITCHELL. Thank you very much.

I assume, would you favor some action on the part of the Congress or the FCC to limit cable ownership by those forces which already control large portions of the media, be it the print media, radio or television. You would favor?

Mr. WILKINS. Absolutely. There is a long history in FCC deliberations as a result of the 1934 act which requires or limits the number of units of communication that a corporation, any corporation, can own. It is generally 21; 7 radio, 7 television, 7 AM and FM radio, either way, so it is 21. And I think the same kinds of rules in some way, some definable way, should also limit the number of cable homes that an MSO can also operate.

I think that it is necessary that the FCC look carefully at regulations, because in fact these companies will become incredibly powerful as information, not just the kind of information that we see, the news and the entertainment programing flows down those wires, financial information on you and I, and transactions with local banks, correspondence with other computers, the kinds of books we read and the like, flows up and down those cables. And some MSO, faceless person, sitting out there gathers that information, stores it in a central computer processing unit and makes it available for the next user to control those kinds of systems. I think that the FCC or some other regulatory authority absolutely must scrutinize what that company does.

Because we set ourselves up for the "big brother" syndrome in a way that most of us now can only visualize as not very threatening, but I can assure you that when someone sits down and says, here is a list of all of the bills you paid in the last year, and gee, you bought a lot of booze and some other things, I think that the picture will become clear.

Mr. MITCHELL. There are some experts in this field who are suggesting that almost immediately after the cable system is finished, or not almost immediately but after the present cable systems are in place, because of technological advances, you will almost have to rebuild those systems, or significantly, substantially change them in 10 years or more. May I have your comment on that?

Mr. WILKINS. There is probably nothing that one can build in this country today that one does not have to continue to maintain and upgrade in order to keep its value. I think that would be true with cable. Cable generates a tremendous cashflow, and that cashflow in many instances can go back in to upgrade the system. It does not need to be paid out to stockholders.

Mr. MITCHELL. The point that I am trying to get to is, if there is going to be a radical transformation of the systems themselves, 10 years, 15 years down the line, what should minority businesses and small businesses be doing right now to make sure that they are locked into that wholesale transformation?

Mr. WILKINS. They have got to own the system.

Mr. **Mitchell**. Ownership is the answer to it?

Mr. **Wilkins**. That is the only answer. You will not be able to generate the kind of capital that it will take to get into the communications industry in 1995. It will be impossible, unless you own something today.

Mr. **Mitchell**. Mr. Wilkins, thank you. I read your prepared statement twice. It is just excellent testimony.

Certainly they are going to, I think this subcommittee and the full committee has a responsibility to do something about the monopolistic trends that are developing. I am not quite sure what we will do, but I can assure you that we will give it some hard thought and try to come up with something.

Thanks a million. I hope you will not be too late for your next appointment.

Mr. Alexander, thanks for being patient and letting the others go first. You have about 30 minutes time left, right?

Mr. Alexander is the director of the National Conference of Black Mayors.

Mr. **Alexander**. Thank you, Mr. Chairman.

TESTIMONY OF J. STANLEY ALEXANDER, DIRECTOR, WASHINGTON OFFICE, NATIONAL CONFERENCE OF BLACK MAYORS, INC.

Mr. **Alexander**. I am just going to make some general comments and reaction to some of the statements already made.

I am J. Stanley Alexander, director of the Washington office of the National Conference of Black Mayors, Inc. I am speaking on behalf of the board of directors of NCBM and the 197 black mayors in the Nation.

We are pleased to have the opportunity to speak on the issues of minority involvement in the growing cable television industry. The black mayors in this country, who represent populations from 100 to well over 1 million, are deeply supportive of Federal policies and efforts to assure the involvement of minorities in the programing and economics of the cable television industry.

The development of cable television requires local legislation and franchises which have been spoken on throughout the testimony today, which makes the issues pertinent to the Nation's black mayors.

Many black-managed municipalities have secured or either expressed interest in securing cable television for their cities. Cable television in its present form is a source of revenue for many of our municipalities. Mayors contend that few minorities are involved in the programing and economics of cable television, thus limiting job opportunities and training in their respective communities.

Generally speaking, the print and visual media play an important role in the development of the population character and perspective on pertinent issues. In 1974, nonwhite Americans watched television 52.1 hours each week, 16 percent more than their white counterparts. Through the media, the presentation of information tends to shape public opinions and attitudes; image projections tend to influence personal ideas of success and failure and reinforces society values and norms. The media, in simpler terms, is the most powerful learning tool in our society. Unfortunately, black Americans have had limited access and input in this process. Today, the black minority experience has not been presented in the most positive light. In too many instances, persons who make programing decisions do not have a personal knowledge and appreciation of black and/or minority cultural experiences, therefore, the visual images are distorted. Only 1 percent of the newsroom staff are minorities, and two-thirds of the Nation's 1,762 dailies don't have a single minority news professional.

In more precise terms, the media continues to use color as the value criterion for defining the life of black Americans rather than content of the black experiences. Many black parents have had to redefine and reinterpret media images to their children in order to assert a positive acceptance of the black experiences.

In response to the first concern that has been expressed throughout the testimonies today concerning franchises and the percentage of franchises, as a representative of the conference I would definitely support an effort to have that increased. And basically because of the fact that most of the towns and our membership who have cable television are small, rural communities, and in either case they do not have the kind of resources within those communities and within those budgets to sustain basic operations.

And in many instances they do not have the kind of numbers in order to bring about the high taxes experienced by large urban centers.

Also the concentration on the larger cities, when in fact over 80 percent of the black mayors in this country come from small towns with populations ranging from 100 to 30,000, and we only have, probably about 10 municipalities with populations of 80,000 or more.

But to mention specifically, most of the cable television efforts in our municipalities have occurred in the smaller towns, in the small, rural, isolated communities. The mayors have had some very serious concerns about the industry, not just in terms of minorities but the way the cable television has been introduced to many of those municipalities.

In most instances the mayors do not have the knowledge, the expertise, and do not have ways for securing information on cable television. So they are pretty much dependent on the individual consultants or the companies desiring to come into that community.

For example, in one particular municipality in Louisiana, a cable television company came in with an estimated 1-percent franchise tax. Of course, that will have a tremendous impact on that local economy. The municipality will not make any money from the cable facility and no budget increase for providing other services to the community.

Also——

Mr. MITCHELL. May I interrupt you a moment? Why would anyone accept that kind of package?

Mr. ALEXANDER. You are dealing with a group of mayors who basically are inexperienced with this industry, and you have the high power salesman who comes into those communities, and it happens. It happens.

Just within the last year we have had a couple of mayors who have called me directly in Washington and asked me to investigate the different ways for dealing with cable television. But that happens. When you are in a rural, isolated community you do not have the kind of expertise and information readily available to you, and if you have pressure from your citizens to get certain services in then it becomes more than just a question of finance; it becomes a political decision as well.

So those are the kinds of problems we are facing in those towns. Cable television, based on our experience, cable television in smaller towns is very fast, and they are more involved in—more activity occurring in the rural, in the smaller towns than you can imagine, across the country.

Since I have been in Washington, and in the Atlanta office of the conference, we are constantly being approached by cable television companies from New York and different parts of the country in terms of having access to our small, rural communities.

And so I would like to dispel the idea that cable television is pertinent only to the large urban centers. That is not true.

Also, and generally speaking, we are not just concerned about the economic side of cable television but also the involvement of blacks, or minorities in the development of the programs and the programing activities of cable television. In those cities where, in rural and small towns, television is probably one of the most important entertainment that you can find in urban centers, so, therefore, many of the mayors are concerned about the kinds of information and the kind of program activity that occurs, in relationship to their constituency.

And the majority of these communities are black, and this is one of the concerns that the mayors have expressed to us.

In summary, I would just like to make the point that in the American tradition those who control the economics of any industry also dictate policies and make decisions based on their interests and position in the society. And we feel at the conference that the only way that black and minority Americans can insure the representation of their culture and experiences is to participate in the economics of the media. Cable television will provide that vehicle.

Cable television affords blacks the opportunity to participate in media economics, which plays a significant role in programing decisions. Not only would this opportunity be beneficial to blacks but it will allow other Americans to share in a positive portrayal of black Americans.

We hope that this committee will give serious consideration, and efforts are needed to bring blacks into the economics of the cable industry. The anticipated outcome will be blacks and other minorities will have influence in the development of media programs reflective of positive images of the black culture in the American society.

Mr. MITCHELL. Thank you very much.

I do have some questions, but first I want to announce since you have raised this issue that this is but the first set of hearings. Our second hearing will take place on October 13, and we will focus on local, State, and Federal jurisdiction, and we will hear from minority and small cable TV system operators and franchise holders; what are their experiences.

I would assume that because of the smallness of the population that there would be relatively little opportunity for minority ownership of cable in the towns where the black mayors are in charge. I would assume that. I may be wrong.

Mr. ALEXANDER. In the last 3 months we have sort of changed that, things that we have got, where we have four or five municipalities are located within let us say a 10-mile radius, we do, we have encouraged some minorities to go into those communities.

Mr. MITCHELL. That is precisely what I was going to recommend. It would seem to me that, and I am just using Tuskegee as an illustration, that it might be difficult to find the minorities to actually own a franchise in that locale, but if you did a kind of consortium approach where you got together with three or four other municipalities, ownership is not impossible under that circumstance.

Mr. ALEXANDER. Well, within the organizational structure as of 2 weeks ago the organization will be going into cable television as part of its program and ongoing activities to become economically independent. We have been working with the municipalities in terms of the franchise and other types of regulations.

Mr. MITCHELL. Then the other thing is that certainly, even if you cannot have ownership in a very small town, I would think the possibilities for programing would be excellent for the local population.

It has been my experience as I have moved around this country, the big cities and the small cities, there is a wealth of talent in the area of programing. Certainly I would like to see local minorities take advantage of the programing opportunities.

Can you provide us with a list of the cities which have black mayors and whether or not these cities are wired for cable TV? Can you get that for us?

Mr. ALEXANDER. Yes; I can.

Mr. MITCHELL. I would appreciate it if you would send that to us as soon as possible.

[The information requested was not received.]

Mr. MITCHELL. Thank you very much for your patience.

[The following was submitted for insertion in the hearing record:]

National Association of Television & Electronic Servicers of America

☐ EXECUTIVE DIRECTOR
FRANK J. MOCH
5830 SO. PULASKI ROAD
CHICAGO, ILLINOIS 60629
(312) 582-6350

NATESA
The Sign of
PROFESSIONAL
ELECTRONICS
SERVICE

☐ PRESIDENT
LEO E. CLOUTIER
4774 W. ADAMS BLVD
LOS ANGELES, CA 90016
(213) 731-5811

VICE PRESIDENT: ELLIS HALL, 2016 YANKEE RD., MIDDLETOWN, OH 45042
SECRETARY
TREASURER: RICHARD EBARE, P.O. BOX 32, ESSEX JUNCTION, VT 05452
IMMEDIATE PAST PRESIDENT: PAUL F. KELLEY, 287 SHAMROCK DRIVE, WARWICK, RI 02886

RECEIVED
SEP 23 [illegible]
PARREN J. MITCHELL

September 21, 1981

Mr. Parren J. Mitchell, Chairman
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Sir:

We are very interested in the future of cable TV and how it affects small business. Unfortunately, we cannot attend your September 23, 1981 hearings.

Our concern is, first, that cable TV, from all indications, will eventually be another monopoly, very much to disadvantage to viewers and small business.

Second, we are concerned that cable TV will follow the pattern of AT&T, providing programs, means of reception, installation and maintenance of the receivers, which would destroy at least 20,000 independent small businesses which have served the public well, economically and without restraint of business.

The disadvantages of monopoly in the system and control of all aspects have both been adequately proven in the case of AT&T and expensive actions in Congress and courts. We ask that this letter be accepted in evidence at your hearings.

Sincerely,
NATESA

Frank J. Moch
Executive Director

FJM:jn

cc - Key Personnel

National Association of Television & Electronic Servicers of America

☐ EXECUTIVE DIRECTOR
FRANK J. MOCH
5930 SO. PULASKI ROAD
CHICAGO, ILLINOIS 60629
(312) 582-6350

NATESA
The Sign of
Professional
Electronics
Service

☐ PRESIDENT
LEO E. CLOUTIER
4774 W. ADAMS BLVD.
LOS ANGELES, CA 90016
[illegible] 73[illegible]5611

VICE-PRESIDENT: ELLIS HALL, 2916 YANKEE RD., MIDDLETOWN, OH 45042
SECRETARY: ROBERT P. NEAL, 2411 WASHINGTON ST., WAUKEGAN, IL 60085
TREASURER: RICHARD EBARE, P.O. BOX 32, ESSEX JUNCTION, VT 05452
IMMEDIATE PAST PRESIDENT: PAUL F. KELLEY, 287 SHAMROCK DRIVE, WARWICK, RI 02886

RECEIVED
OCT 13 1981
PARREN J. MITCHELL

October 9, 1981

Mr. Parren J. Mitchell,
United States Representative
Chairman / Committee on Small Business
2361 Rayburn Office Building
Washington, DC 20515

Dear Rep. Mitchell:

Re: Barring cable TV from unfair competition on sales of sets and service thereof.

Independent consumer electronic servicers have maintained generally exclusively, various home electronic devices, many quite complex, since the early 1920's. In so doing they provided the public with entertainment, news, and education. At the same time they made possible a viable producing industry that in turn was essential to the defense of our nation in several wars.

The cost to independent servicers in special and continuing education, expensive service data libraries, test equipment, tools, insurance, etc., to enable them to do a truly outstanding job, is the fact that purchase of home electronic sets has increased each year and now adds up to millions of units per year.

Servicers monetary rewards have been well below those enjoyed by other businesses and trades, which permits all Americans to enjoy and benefit from consumer electronics.

Several decades ago, cable TV came on the scene as a means of bringing TV programming to areas where distance, sparsity of viewers and geographic problems made usual broadcasting impractical and even impossible. We welcomed this new phase. In fact, early cable systems were developed and financed by independent servicers.

New technology now makes investment in cable TV a profitable venture, especially if investors are assured of complete control of not only providing the service, but TV sets, programming and maintaining of the sets.

There are strong signs that cable TV entrepreneurs do plan to follow closely the pattern and methods promulgated by the telephone monopoly. This would be very restrictive and costly to the public, as is the case with the telephone monopoly, which Congress and Justice and FCC have now recognized, which led to the current action on AT&T.

It certainly would be tragic to let this happen on cable TV which effects almost all Americans.

We have no objection to cable TV, however we believe adequate provisions must be taken to permanently exclude, by law, cable companies from sales of sets and maintenance thereof.

Very truly yours,
NATESA

Frank J. Moch

Frank J. Moch
Executive Director

FJM:jn

cc - Executive Council

P.S. Upon receipt and study of your release of October 7, 1981, we must not only agree with you that small and minority enterprises CANNOT compete with cable TV giants in major cities, but even in ANY city where a franchise would be worth having.

Mr. Mitchell. And I thank all of you for participating in this first set of hearings on this issue. We have learned quite a bit.

I must confess I feel kind of frustrated. On the one hand people are telling me it is too late; you cannot get in. On the one hand people are telling me, "Keep the Federal Government out of this; it does not need to be involved." And yet on the other hand I see an enormous exclusion of small businesses and minority businesses. I am inclined to think that it is not too late for us to get them involved. And I am inclined to think that the Federal Government, this Congress does have some role to play if we are going to be protected.

Thank you for your participation. The hearing is now adjourned.

[Whereupon, at 12:15 p.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

CABLE TELEVISION INDUSTRY

TUESDAY, OCTOBER 13, 1981

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS, COMMITTEE ON SMALL BUSINESS,

Washington, D.C.

The subcommittee met, pursuant to notice, at 8:30 a.m., in room 2359-A, Rayburn House Office Building, Hon. Parren J. Mitchell (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN MITCHELL

Mr. MITCHELL. Good morning. As we begin this second set of hearings on cable TV and the opportunities for local small and minority businesses, I would like to call your attention to a few articles which are relevant to the focus of these hearings. The first of these articles appeared in the August 1, 1980, Los Angeles Times, entitled, "Cable TV Industry Growing Too Big for Small Investors," a message which is all too clear. The second article, entitled, "Raising Money for Cable TV," appeared in the January 15, 1981, New York Times and seems to suggest that with the proper investor and cable TV expertise, the opportunities do exist.

"Cable Fever" is the title of the third article which appeared in the June 6, 1981, TV Guide and which advised that: "The lure of lucrative franchises has led to fierce political battles and scandals."

Finally, the article, "Cable TV: Electronic Redlining," appeared in this month's issue of Black Enterprise magazine. The author's message there was that the "cable industry is growing at a tremendous pace, but blacks will have to fight for a fair share of opportunities."

[Articles referred to above follow:]

CABLE TV INDUSTRY GROWING TOO BIG FOR SMALL INVESTORS

(By Kathryn Harris, Times Staff Writer)

Five years ago, Los Angeles businessman Marc Nathanson started his own cable TV company for $6 million, with sizable investments by a venture capital company, his father and friends.

"Today, to do the same thing you'd have to spend $25 million to $30 million," says Nathanson, president and chief operating officer of Falcon Communications.

Cable has left behind not only the mom 'n pop era of 25 years ago, but very nearly the venture capital stage of financing. "I think it's a dead issue for venture guys . . . I think its for big players," says Donald T. Valentine, a well-known venture capitalist who is president of Capital Management Services in Menlo Park.

MAJOR FIRMS INTERESTED

With more than 20 percent of the TV households in the United States now subscribing to a cable service, the industry finds itself welcomed to the mainstream of conventional financing by major banks, insurance companies and acquisition-minded corporations.

Nathanson, for example, has a $12-million line of credit from the First National Bank of Boston, and he's visiting insurance companies in New York to discuss other financing. "About once a week I get an offer from major companies, unsolicited," he says of the prospective cable system buyers. In five years, Falcon's subscribers have grown from 4,101 to 29,000.

The question no longer is how to finance a cable system, but how happy the investors will be in the next few years as the cable operators build the systems they've promised.

"Everybody in the business is going to get rich if they're any good," says Paul Kagan, a top consultant in the industry who works out of Carmel. Kagan, and entertainment securities analyst Anthony Hoffman with A. G. Becker Inc. in New York, agree that cable revenues could reach $2.4 billion this year, up 60 percent from the $1.5 billion reported in 1978.

But those soaring revenues also have whetted the appetite of the cities who grant franchises, and the performers, writers, directors and other artists who create programming that is transmitted via cable. A number of groups argue that they are entitled to some share of the cable industry's revenues. Pay TV is a key issue in the actor's strike begun last month against producers.

Amid all this publicity, the investors' enthusiasm is robust, says John Saeman, president and chief executive of Denver-based Daniels & Associates Inc., a top dealmaker in the industry. "It's a hot industry. It has a great deal of appeal," says Saeman, who estimates that roughly 80 percent of the deals in cable acquisitions or startups are being accomplished by corporations.

Some syndicated deals are being offered private investors as prospective tax shelters. The enormous cost of laying cable will trigger near-term losses for the investor who might want to offset profits elsewhere. Yet the investor can also cherish his cable investment as one predicted to be highly profitable in the long run, a monopoly environment for all practical purposes.

FRANTIC FREE-FOR-ALL

Although many cities grant "nonexclusive" franchises to cable operators, it appears unlikely that a second operator would be allowed to lay cable through duplicative streets of communities. So the cable operator enjoys a near-monopoly in offering dozens of channels of programming, and prospective two-way uses with the help of a computer terminal in the home. With its two-way communicative capability, cable may take a position alongside the telephone and television as a revolutionary product for the American home.

So what could possibly go wrong for the investor? Bad management, or a cable operator who is making promises he can't profitably meet, says Hoffman, the entertainment analyst and vice president with A. G. Becker in New York.

"We are our own worst enemies, engaged in an orgy of excuses, blinded by the belief that nothing can go wrong. The result is a frantic free-for-all," said Dick Loftus, a member of the executive committee of the National Cable Television Assn., when he addressed his colleagues at a convention in May.

The promises being made for new franchises are "getting out of hand," adds Nathanson, who argues that any proposed cable system with more than a 54-channel capacity "is blue-sky and the public will pay unnecessarily for it." As an example, he cites three recent bids submitted for a cable franchise in Norwalk, with its population of 90,000.

PROPOSALS WATCHED CLOSELY

One company offered Norwalk an 80-channel capacity, and another a basic subscription rate of $5.95. "Obviously these companies, in my opinion, are trying to do what I call low ball," says Nathanson. Yet his company won Norwalk's franchise last week with an offer of 54-channels and $8.25 per month subscription fees, because Falcon's proposal for local programming appealed more than the two competitors', says Chuck Rough, Norwalk's assistant director of public works.

Franchising proposals in such major markets as Portland, Oreg., Dallas, Indianapolis, Chicago and four of the five boroughs of New York are being watched closely by industry analysts who worry that extraordinary promises could drive up the already high cost of building cable systems.

The cable industry has been dealt "two double whammies," says Hoffman, first by its own escalating franchise promises, and second, by a stance adopted last year by the American Institute of Certified Public Accountants.

There's a good chance that low earnings could be reported by some corporations with cable holdings as they build new cable systems, because under the accountants' ruling, they will be required to start showing expenses on their income statement as soon as the first subscriber signs on the still-growing system.

LOW EARNINGS EXPECTED

Until last year, there was no uniformity in the way cable operators reported the losses incurred in building a cable system. Some companies chose to capitalize, or count as assets, all their costs until the systems were breaking even financially or saturating a certain proportion of the local TV households. Only at that point would they begin reporting their costs as expenses.

The accounting change matters little to the privately held companies that don't worry about impressing their shareholders.

But the conglomerates that bought cable systems because "they thought they were buying a stream of earnings . . . (may wind up) reporting low earnings to the public, and that's not why they bought cable," says Hoffman. "Earnings are going to be low rather than high. There's no question that there will be a negative effect on the price of the stock."

Hoffman says the effect of the accounting rule change is already evident at UA-Columbia Cablevision Inc. The Westport, Conn.-based company, ranked 10th in size as a cable systems operator, reported a 27 percent increase in net income for its fiscal year ended Sept. 1979, but it is expected to report "about half that" percentage increase this year, Hoffman says.

Nevertheless, some of the cable company stocks have been trading activity because investors think some companies are susceptible to takeovers. Investors feel "the music has stopped and everyone is rushing for chairs," Hoffman says of the scramble by big corporations to snap up cable companies.

Four takeover candidates in Hoffman's view are Teleprompter Corp., the nation's largest cable systems operator; Tele-Communications Inc., third-ranked; UA-Columbia and United Cable Television Corp., 11th ranked.

Meanwhile, some of the conglomerates that already have cable holdings are pouring money into the development of programming for the cable industry.

At Warner Amex Satellite Entertainment Corp., the cable programming arm of a joint venture by Warner Communications Inc. and American Express Co., $7 million is being spent on children's programming this year even though its satellite-fed "Nickelodeon" channel for young people may generate just $3 million in revenues, says John A. Schneider, president and chief executive.

Although Warner Amex does not expect to profit from Nickelodeon for "at least three or four years," Schneider says, the company is confident that as cable penetrates more homes, at least one children's channel will be in demand. "We would like to be the one," he says.

Interestingly, Nickelodeon is portrayed as a network that will depend on neither additional subscriber fees nor advertising. Nickelodeon is betting on its future volume on viewers. The local cable operator who takes the network must pay Warner Amex 8 to 10 cents per subscriber per month for its use, under current rates.

FEES MAY BE ENDED

ESPN, the all-sports network owned by Getty Oil Co., is counting on advertising for its long-term profitability. Cable operators who take the network now are charged 4 cents per subscriber per year. Of that sum, the operator can get back as much as 30 cents a year per subscriber by advertising or promoting ESPN as one of his cable offerings.

ESPN hopes to discontinue its fees to cable operators by 1984, to rely solely on ad revenues, according to President Chester Simmons.

"That's when you really will have reached success and you'll start compensating the (local cable) systems for taking your program services the same way the (broadcasting) networks do," says Simmons, who left a job as NBC Sports president last year to head ESPN.

In commercial broadcasting, the networks are actually compensating local affiliates for broadcasting their commercials, not programs, explains one ABC network official. A rate is established depending on the time of day. "For instance, in prime time, if a station had an hourly rate of $1,000 and the network sold all its commercial spots, we would pay (the affiliate) 32 percent or $320," the official says.

ESPN makes 30 percent of its advertising time available to cable operators for local advertising. But most operators simply use public service announcements provided by ESPN during those spots. Operators are "not set up to sell advertising . . . when they've got financing to get and systems to build, they just don't have time to spend on advertising," says analyst Hoffman.

But James Cavazzini, ESPN vice president of affiliate marketing, believes that local advertising is catching on. During a trade conference in San Francisco last week, he says, "Most of the seminars were on advertising—how to sell advertising."

One incentive, he says, is the potential $500,000 in additional revenues a local operator could earn by selling 30-second spots for $10 apiece on ESPN alone next year. When ESPN begins its promised 24-hour service Sept. 1, Cavazzini says, the local operator will have 50,000 30-second spots available for the year.

To defray the expense of starting up local advertising sales efforts, Cavazzini predicts that some cable operators will band together to solicit regionalized advertising.

The prospective revenues of the cable TV industry have not been lost on the actors and others in the creative community. On July 21, the Screen Actors Guild began a strike in part over the issue of what share they'll receive from pay TV revenues earned by producers or distributors.

[From the New York Times, Jan. 15, 1981]

MARKET PLACE: RAISING MONEY FOR CABLE TV

(By Robert Metz)

What does a company do if it has virtually no physical assets but considerable skill in the cable television business and a desire to become a major operator?

The banks and insurance companies will not lend money without collateral, and any shares such a company might issue would sell for only a modest price.

So Jones Intercable decided to adopt a method used in the real estate industry to raise money: offering partnership interests in "blind pools."

It works like this. The company sets up limited partnerships each year. The partnerships are organized pools of capital contributed by the investors. Until the partnerships are closed out, the general partner—Jones Intercable—does not know how big the capital pool will be. Thus the money is collected "blind," and the management picks existing cable systems to a acquire once the amount of cash available is determined.

In 1979, for example, Jones Intercable registered a $10 million offering with the Securities and Exchange Commission but was able to raise only $8.4 million. The partnership then bought cable television systems from Florida's Palm Beach County to Torrington, Wyo.—nine in all—costing a total of $15 million. The rest of the money was raised through banks and financing with the sellers.

By contrast, in 1960 Jones Intercable registered a $15 million pool that was oversubscribed by $200,000. Under S.E.C. rules, the excess had to be returned to investors.

The 1980 partnership has already bought two cable TV systems in Wyoming, one in Sebastian, Fla., one in Sedalia, Mo., and others in St. George, Utah; Carolina Beach, N.C., and central Illinois. Jones also bought a franchise for this partnership in suburban Atlanta. Under the plan, the partnership will buy two more systems for a total investment of $25 million to $30 million.

Neil E. Jones, vice president for development at Jones Intercable, the general partner, was reached by telephone in Denver, where the company is based. Mr. Jones's brother, Glenn R. Jones, 50 years old, is chairman and chief executive officer. Robert J. Lewis, 49, is president and chief operating officer. Mr. Lewis spent the last four years as president of Cablecom General, a major cable television system operator that is a subsidiary of the General Tire and Rubber Company.

Mr. Jones was asked why investors might consider putting money into these limited partnerships. He replied, "There are two reasons.

The primary reason, he said, is capital appreciation. Cable television systems sell at multiples of cash flow, he said, which increases when subscriber lists grow and when subscribers take the Home Box Office service and when basic rates are raised.

The second reason, he said, is tax benefits. Cable television systems can be depreciated over a period of time—roughly 10 years when all elements of a system are lumped together. That is relatively fast, Mr. Jones observed. "We accelerate the depreciation and pass those noncash depreciation write-offs back to the investor," he said.

Additional write-offs result from the amortization of the franchise—the license granted a cable operator to do business in the community. Further write-offs are flowed through to the investor in the form of tax-deductible interest payments made on loans that helped finance the acquisition.

Years later, the partnership's cable television systems are sold and the proceeds returned to the partners. This usually occurs within five years, although the maximum life of a partnership can be 15 years under the agreement.

"What happens," Mr. Jones said, "is that the investor first gets all the money he contributed. Whatever is left over is shared with the general partner, with 25 percent going to Jones Intercable and the balance to the limited partners. Meantime, Jones has earned 5 percent of gross revenues as a management fee."

Partnership interests are sold through members of the National Association of Securities Dealers. The commission is 10 percent of the investment, with 8 percent going to the brokerage firm making the sale.

The suitability requirements are relatively modest in most states. The investor must have a net worth of $20,000 exclusive of home and personal property.

According to the Brennan Report, which covers tax shelter and tax planning matters, a Jones partnership set up in 1972 (Fund One) produced a 16 percent after-tax annual return, and a partnership set up in 1975 produced a 21 percent after-tax annual return. This takes into consideration all write-offs.

Mr. Jones acknowledges that the plan has shortcomings. Competition for good cable television systems is getting stronger, and prices are rising. While the regulatory climate is now favorable, "there is nothing the cable companies can do to prevent negative regulatory changes," Mr. Jones said.

What is more, the return an investor can expect is determined by the quality of the properties obtained for each partnership and the ability of the general partner to do a good job of management.

[From the TV Guide, June 6, 1981]

CABLE FEVER

THE LURE OF LUCRATIVE FRANCHISES HAS LED TO FIERCE POLITICAL BATTLES—AND SCANDALS

(By Laurence Bergreen)

The electronic equivalent of a gold rush is taking place in communities across the country. The prospectors are the giant cable companies, and the gold they look for takes the form of lucrative franchises—the right to supply and charge for cable service to a particular area.

The competitive frenzy brought on by the rush has less to do with the visions of the "wired city" we've all been hearing about than with old-fashioned political rough-and-tumble. Major cable interests regularly resort to an array of lobbying tactics that threaten to inflate substantially the cost of installing cable systems. And the increased costs will be passed onto—you guessed it—the consumer.

The expensive tactics include the practice known as "rent-a-citizen" (giving away blocks of free stock in cable companies to influential people), promises to contribute to schools and libraries, and donations for civic improvements such as street repair. These and other costly ploys have spread across the country along with cable fever. Warren Buffett, who was chairman of the Sun newspapers in Omaha, Neb., during a recent franchise battle there, has labeled tactics such as rent-a-citizen a "national scandal," even though the ill effects are obscured because each franchise battle is a strictly local news event. In any case, cable companies are willing to run the risk of criticism because the time to acquire franchises is now. In the next two years, one analyst predicts, most lucrative communities will be snapped up.

To get an idea of the extent of the current cable-franchising boom, keep in mind that back in 1968 only 2.8 million American homes (5 percent) had cable service, whereas 18 million, or nearly 23 percent, have it now. Predictions point to 46 million cable subscribers 10 years from now. While many choice areas have already been wired, plums such as Boston, Chicago, Philadelphia, Detroit, Baltimore, Washington, D.C., parts of Los Angeles and Atlanta, and four of New York City's five boroughs remain to be picked within coming months. Cable revenues rose from $900 million in 1975 to $1.8 billion in 1979 and may reach $3.6 billion by 1985.

While the lure of tremendous profits accounts for the intensity of the franchise battles, in which as many as 22 companies may vie for a single community, cable remains notoriously expensive to install. Underground cable costs an estimated $67,000 per mile and pole-strung cable about $11,000. This means the over-all cost of wiring a city like Dallas could be as much as $100 million, and that's before any costly lobbying tactics are added.

With costs running this high, communities deciding which cable operator to choose increasingly favor the big multiple-systems operators, companies with the financial resources and track records to handle the job. The select few include Teleprompter, Time Inc., Sammons Communications, Cox Cable Communications and Warner Amex.

Fierce competition among such giants adds to the cost of winning a franchise. In Dallas, for example, the six competing firms each plunged $500,000 into their campaigns. Warner Amex eventually received the nod, in part because of the two-way Qube feature the company offers. However, sore-loser Sammons, a Dallas-based cable operator, led an effort calling for a referendum (Warner Amex won again). Other delaying tactics have been successfully used elsewhere, most notably in the giant New York City borough of Queens, where a competing company, Orth-O-Vision, found a legal loophole that overturned an earlier decision in favor of rival Time Inc. and forced a new round of bidding.

Intense competition for franchises extends beyond city limits. No fewer than 22 companies are wooing the 200,000 potential subscribers of suburban Fairfax, Va.; and charges of influence peddling in this community are almost as common as hopeful cable companies. The Washington Post revealed, for example, that one of the contenders, Storer Broadcasting, recruited a cadre of 11 rent-a-citizens to help win the battle of Fairfax. One of them, former supervisor Alan Magazine, received a whopping 8 per cent of the Storer stock free in return for his clout. That stock is worthless now, but should Storer win the cable sweepstakes, it could be worth millions.

While the practice of giving away stock is legal, it inflates the cost of cable service for the subscribers. According to Michael Botein, professor of law and director of the Communications Media Center of the New York Law School, one-fifth of the start-up cost of a typical suburban cable system represents stock given away to win the franchise. What this means to a subscriber, Botein says, is that $20 of a typical $240 yearly subscription fee goes to covering the cost of unfunded stock. Other estimates run even higher.

Bleak as all this sounds, there are some limitations inherent in rent-a-citizen arrangements that could bring the system to an end. The cost of service could go high enough for the consumer to lose interest and the franchise holder would then lose profits. But cable companies would argue that the practice, correctly applied, can actually benefit the host community. In its battle for the Pittsburgh and Cincinnati franchises, for example, Warner Amex gave 20 per cent of the stock not to private citizens but to nonprofit institutions. Partly as a result of this tactic, they won both bids.

However, companies vying for franchises do struggle hard to achieve a competitive edge. The thinking of one company engaged in this kind of maneuver came to light dramatically in the fall of 1980, when newspaper executive Buffett made public part of a letter designed to recruit him as a rent-a-citizen. It read, in part, ". . . the winning of a cable franchise is essentially a political campaign. . . . The ability of local investors to take the political temperature, make introductions and appointments on a timely basis, and to lend their personal credibility to our formal business proposal is vitally important." Buffett, who resisted the attempt to enlist his favor, will not disclose which company sent him the letter.

Despite abuses of the franchising process, there are ways in which municipalities fight back against high-pressure tactics—or take advantage of them. Occasionally, a city learns to turn the cable companies' willingness to extend favors to its own advantage. In San Antonio, Texas, the city council received a million-dollar advance from the franchise winner, Cablevision, toward street repair. Other cities have extracted promises to construct sewers and traffic lights. In the end, though, it will be the cable subscriber who pays for the new sewers.

Communities are turning to nonpartisan consultants to help them cope with the cable companies' seductive ploys. The best known of these is the Cable Television Information Center Associates in Washington, D.C. Director Harold Horn estimates that his organization has been consulted about 2,000 times since 1972. CTICA is currently performing more than 60 evaluations. When vying for franchises, competitors often overwhelm communities with slickly produced portfolios and dazzling promises. Horn's organization helps make the proposals (which run 500 to 600 pages in length) understandable by converting them into readable 100-page summaries. The consulting process slows decision-making, and Horn thinks the delay usually works in the community's favor. A town moving too fast will, he says, "probably make a mistake."

The four outer boroughs of New York City—the Bronx, Staten Island, Queens and Brooklyn—are getting some expensive help from a consultant, in this case the prestigious law firm of Arnold & Porter. Together the boroughs form the largest and richest remaining cable market, and last spring the city's Board of Estimate, deciding that it lacked the specialized knowledge required to make informed decisions, paid the firm more than $650,000 for its advice.

And advice is needed, for the problems confronting the city and its director of franchises, Morris Tarshis, are typically New York in scale—that is to say, overwhelming. By the same token, the financial stakes are awesome. Handled properly, the Brooklyn franchise could bring in some $100 million a year to the lucky franchise winner, who would stand to earn a profit of between 15 and 20 per cent before taxes. The city also stands to do well, collecting a total of about $10 million a year from all franchises. Since New York promises to be The Big One, the competing companies are moving with great caution and straining to avoid the appearance of impropriety. Thus companies tend to rely on powerful connections rather than rent-a-citizens. Decision-maker Tarshis is moving cautiously. "I don't think anything is going to happen for a year at least," he predicts.

Though cable interests are sensitive to the increasing public scrutiny of their tactics, they have not significantly altered them. But Andy Litsky, until recently director of public affairs for the National Cable Television Association, finds industry critics hypocritical. "They're talking out of both sides of their mouths," he says. "They're saying, 'My God—rent-a-citizen. Look at what they're doing. . . .' But it takes two to tango. The cities themselves," he notes, "have not been blameless."

CABLE TV ELECTRONIC REDLINING

The industry is growing at a tremendous pace but blacks will have to fight for a fair share of opportunities

A key session at this year's cable television convention in Los Angeles was to be a dialogue between the industry and minorities about their role in cable TV. The minorities were there in strength; the industry brass never showed up. It was a startling display of indifference on the part of the industry—startling because as the cable companies move to wire the cities they will need the involvement of all minorities.

Until now, the cable companies' efforts to involve blacks and other minorities have been slow and halting. Since cable TV has been a suburban and rural industry serving predominantly white audiences with an almost completely white work force, it has been reluctant to change.

Cable tv is finally coming to the big cities where the black communities are—to Baltimore, Boston, Chicago, Detroit, Philadelphia and Washington. But there is growing skepticism about the so-called benefits of this electronic invasion. Blacks are disturbed because the industry has made so few efforts to involve them in its prosperity—in ownership, in employment, or in programming. Indeed, with the industry free of most regulatory controls—including the ones that promoted affirmative action in broadcasting—its responsiveness to minorities may lessen even further. Such comments as the following are typical of the widespread reactions in black communities. "You are looking at an industry so racist that it can't help but have serious trouble whenever it tries to get into the black community," warns Pluria Marshall, chairman of the National Black Media Coalition.

By Udayan Gupta

There are other factors as well. Blacks are becoming conscious of "electronic redlining"—selective wiring that can deprive large sections of a community of the important services promised by cable TV. The future forbodes a new kind of black ghetto endangered by the absence of security and fire alarm systems, and isolated by a lack of information from data banks, catalogs, and newspapers. It would be an economic and political backwater still using the mails instead of electronic money transfer systems, and "going shopping" instead of ordering at ease from home. Most of these advancements are predicted for the near future and will be carried by cable TV systems.

The general feeling is that the cable TV industry will not be supportive of affirmative action without vigorous encouragement from minorities themselves. "One of the major reasons that affirmative action has been slow in cable is because the minority community has yet to understand how to interface with the cable industry," says Gayle Greer, vice president for new market development at American Television & Communications Corporation.

Nevertheless, most blacks within the cable TV industry have not despaired. "We aren't as badly off in cable as we were at the beginning of broadcasting," argues Frank Washington, vice president of Times Mirror Cable and formerly with the FCC's Broadcast Bureau. "Cable is changing. "It is developing a cosmopolitan air and the values of big business."

"The industry is much better with respect to minorities than it ever has been," says Greer. To which, Washington adds, "The large companies entering the cable industry are extremely sensitive to the issue of minorities because they have already had to deal with it in their own industries."

The fact remains that black decision-makers are few and far between in cable TV. Less than 3 percent of the total corporate staffs of the top five multiple system operators (MSOs) are black and many of their positions are decorative (*see* Employment Chart).

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FRANCHISING

Black applicants have been awarded cable franchises in Newark and East Cleveland and are in the process of sewing up south-central Los Angeles. But, in general, the growth of black ownership remains disturbingly slow. Few blacks are expected to vie for the available franchises in Baltimore, Chicago, Detroit, Philadelphia and even Washington, all cities with large black populations.

The deterrent to black participation in these cities is the large size of the franchised areas and the corresponding tremendous cost involved. "The communities are raising the stakes, they are bidding up the ante," says Barry Washington, president of Connection Communications Corporation (CCC), which won the Newark franchise. "The cable systems that the communities are asking for make it impossible for any but the largest corporations to seek franchises," says Morgan Brown, who is among a group of black investors who bought a share of Connecticut's Fairfield County franchise.

The battle is not entirely lost, however. If blacks working at the local level can get the political powers-that-be to break down the larger franchises into smaller jurisdictions, the prices would be reduced and more franchises would be within the reach of minority bidders. "Ownership is decided by local politics and local community interests," says ATC's Greer.

Support for this local political action must come from national black organizations, including civil rights groups such as the NAACP and the Urban League, both of which have had little to say so far about the impact of cable TV on the black community. Pluria Marshall, among others, holds the Congressional Black Caucus remiss in its lack of action on the cable TV controversy.

Although it may be late in coming, the Caucus now seems poised to enter the battle for cable. The black Congressional group for the first time will include a panel discussion on cable TV at its annual gathering in Washington this September. In addition, Rep. Parren Mitchell, chairman of the House Committee on Small Business, will conduct congressional hearings on the issue in October.

The political problem for black cable TV applicants is difficult to solve, but the financial puzzle is even more intractable. When black companies such as Newark's Connections Communications Corporation received franchise awards, they found lenders few and far between. On the other hand, there has been no shortage of multiple system operators willing to buy them out for substantial sums of cash.

Connection Communications approached New York's Chase Manhattan bankers with a $9.5 million financing plan. Chase—the largest lending bank in cable TV—approved the loan initially, but then reversed its decision. CCC then began to receive offers for joint ventures, mergers, and buy-outs from MSOs who also happened to be Chase clients. CCC rejected the offers and eventually succeeded in securing its financing from other sources.

Why did Chase reject CCC's proposal? Stewart Blair, a Chase vice president who worked on the CCC deal, defends the bank's actions. "We tried very hard to make that deal work, but we just couldn't do it as an honest economic proposition," he says. Blair explains that major lenders look at four significant criteria in evaluating cable proposals: (1) the track record of the corporate borrower and its principals, (2) subscription and advertising sales potential, (3) the collateral or organizational resources that will guarantee the loan, and (4) the long-term projections for revenues and income.

HOOKING UP TO CABLE

For further information about training in cable TV, contact any of the following:

MANAGEMENT TRAINING

Cox Cable, Atlanta, Ga.: William Spiesel, (404) 393-0480
Times Mirror, Irvine, Calif.: Erisë Booker, (714) 549-2173

TECHNICAL TRAINING

ATC, Englewood, Col.: Bob Odlund, (303) 773-3411
Cablevision/Restoration, N.Y.: Tony Clarkson, (516) 364-8450
CCC, Newark, N.J.: Clarence Lilley (201) 643-6161
Teleprompter-Telecom, St. Louis, Mo.: Richard Toth or Pamela Grant, (314) 725-6400
Warner-Bidwell, Pittsburgh, Pa.: Bill Strickland, (412) 323-4000

Ignored is the fact that small borrowers, including minorities, are thwarted by such criteria. CCC was a stand-alone operation, a "what you see is what you get" proposition. It was backed by no capital reserves or organizations. "What made things difficult was the financial consideration, not the racial," said Blair.

Most lenders feel that for black cable applicants to be good financial risks, they have to come up with stronger financial packages. Blair suggests that they should give up a piece of the action in return for some solid capital backing. "It may hurt someone's pride, but it's certain to make the deal go through," he says.

In contrast, Newark's Washington feels that giving equity away should be a last resort, and that for the present, black entrepreneurs should work out alliances which will give them greater financial as well as political clout. In the New York borough of Queens, Percy Sutton's Inner City Broadcasting and Eugene Jackson's Unity Broadcasting have teamed up to apply for what may be the one most lucrative franchise available. In Brooklyn, the Bedford Stuyvesant Restoration Corporation used its own political clout in the community to work out a deal with Cablevision of Long Island in bidding for Brooklyn's two million prospective customers. For an initial investment of $150,000, Restoration will receive 6.9 percent of the Brooklyn franchise if Cablevision is the winner.

Alliances of black business people have worked elsewhere. In Fairfield County, Conn., a group of eight black investors put down over $1 million this year in a partnership with Scripps Howard and Cablevision.

CABLE TV
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After the $1 million is paid back, the black group will own 13 percent of a franchise which could be worth $60 million by 1985.

Another aspect of this is that even if cable TV ownership is out of reach of most black entrepreneurs, a piece of the action may not be. "Minority concerns should get involved in providing services, such as security, that will be sold via cable TV," says Frank Washington of Times Mirror. Eventually, there may be a lot of services specific to the black community's needs that only the black entrepreneur can provide.

Public access provisions of cable TV franchises are another potential benefit for black communities. "It's the next best thing to ownership," says Barry Washington. "If the community can get cable companies to set aside a fair percentage of revenues for community use, the benefits can be substantial."

In Atlanta, Cable Atlanta has spent over $350,000 to create public access facilities. As a result job opportunities are being created and trainees are learning video production skills. In addition, the black community now receives over 20 hours of black programming each week. "We have been able to formulate the kind of community-sensitive, community-responsive programming that black people need as an alternative to the garbage on the networks," says Jabari Simama, director of public access for Cable Atlanta.

EMPLOYMENT

In spite of a reported increase in black employment in cable TV, blacks as decision-makers are all but absent. "There just aren't enough blacks and other minorities within the industry to draw on," argues Kenneth Anderson, a cable industry employment specialist. Yet cable TV has regularly hired its managers from outside its ranks because it is a young industry and lacks a large pool of skilled management staff. (Tom Wheeler, president of the NCTA, the industry trade association, represented the grocery industry before coming to cable TV.)

Even in the few instances when blacks have been hired for top-level jobs, the motives have sometimes been questionable. In Dallas, Sammons Communications hired Charles Johnson, a veteran black broadcaster, as director of community relations but primarily for display, he says.

"They brought me on for their Fort Worth franchise presentation because I packaged well and sold well," declares Johnson. However, after the Fort Worth franchise was awarded to Sammons, the company put Johnson out to pasture.

Cable needs people who are creative to develop and to market products

"They have refused to give me any responsibilities. I direct no one. I sit in my office for the better part of the day reading a newspaper," Johnson says. When he began asking questions about Sammons' hiring practices and record of doing business with minority entrepreneurs, he was asked to stop. "The president called me in to remind me that I had been hired strictly for franchising. Anything else in the company was none of my business."

Charles Johnson's is not an isolated case. In New Jersey, UA Columbia Cablevision hired Gracie Nettingham to direct its studio operations. She started having problems when she launched "Minorities in Cable," an organization designed to increase minority access in cable TV. Eventually, the company fired Nettingham without stating any specific reasons for the action. When Nettingham took her case to the National Labor Relations Board, UA Columbia quickly settled out of court.

Blacks will face harassment as they organize, warns Jabari Simama, of Cable Atlanta. "However, unless blacks take such risks, they cannot make progress," he concludes.

Despite such experiences, many blacks within the cable industry feel that it really is trying to improve its hiring record. "We are hiring minorities in significant positions in top management and nearly all our cable systems have achieved geographical parity [a company's work force in an area is proportionate with the available minority work force]," says Erise Booker, manager of human relations for Times Mirror Cable.

Booker feels that the relative absence of blacks in the cable industry can be explained by the rural and suburban nature of the industry until now. As cable TV moves into the big cities with black communities, it will have to recruit blacks, she argues.

"The cable industry is making a sincere effort to hire more blacks," confirms Carolyn Baker, director of talent and acquisitions for MTV, Warner-Amex's new 24-hour music channel. Baker thinks that opportunities for blacks will increase substantially as cable TV is wired into black communities. "There will be some jobs there that only blacks will be capable of handling," she says. Many cable companies have established training facilities to provide hands-on technical training to those who are interested in the area.

"Cable TV offers a variety of job opportunities for those interested in the industry: in administration, marketing, production, sales, even finance," declares ATC's Greer. "We need people who are creative, who can develop new products and services and help in marketing them."

"I think the key is how aggressively blacks pursue opportunities," says Frank W. Roselle, Jr., a manager in charge of executive recruitment at Warner-Amex Cable Communications in New York. "There are opportunities in all areas because industry growth is exploding, but the big problem is that there aren't a great many entry level jobs. We need people who can hit the ground running right now and that means they have to have some prior experience."

Roselle says that because "cable pro-

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gramming is still in its infancy stage" there are very few training programs for people fresh out of college. "But if you've developed some skills and abilities in other fields they are transferable. The thing is to find a bridge from industry to industry."

However, in the current unfavorable affirmative action climate, it remains to be seen whether the cable television industry will follow its entry-level employment initiatives with concrete evidence of sincerity—the promotion of blacks into positions of power.

PROGRAMMING

At present national cable TV programming for blacks is limited to Washington-based Black Entertainment Television (BET), started in 1980, which furnishes assorted programming of old movies and black college sports broadcast every Friday night between 11 and 2 o'clock. BET has proved to be a bonanza for Bob Johnson, its president, and Tele Communications, Inc. (TCI), its co-venturer. It is offered on 680 cable systems and has over 20 national advertisers who pay rates as high as $750 per minute. In 1981, BET could gross as much as $1.5 million.

Soon, however, black program choices will extend beyond BET. Theatrical producer Woodie King is developing a dramatic series based on plays by black playwrights, while Peter Andrews, a former NBC-TV vice president, is in the process of launching BCTV, a black cultural network modeled after RCTV and CBS Cable. Andrews' network is expected to feature top-flight black performers and performances as well as movies and dramatic shows. A number of private financing sources have already expressed an interest in BCTV.

"Cable TV, especially pay cable, may be the gold mine that blacks have been looking for," says Stan Lathan, a director who works in television and cinema. "Can you imagine five million black people tuned in to a show? At even a one dollar a head, the returns could be tremendous."

MTV's Carolyn Baker predicts an avalanche of black programming coming some three to five years down the line. Cable companies will narrowcast to blacks—a phenomenon similar to recent trends in radio, in which programs are not targeted for the public at large, but instead the entire programming of the radio station or cable channel is directed at a specialized audience.

Also, cable TV producers have begun to turn to black film and video makers for programming that will appeal to heterogeneous audiences. CBS Cable has commissioned black filmmaker St. Clair Bourne to produce a documentary on the Chicago Blues Scene, a history of black music in Chicago. The program will be part of the network's premiere in October. After completion of the blues documentary, Bourne will produce *The Next Stage*, a documentary on athletes who become entertainers, for CBS Cable.

Bourne is excited about the opportunity to work in cable TV, but at the same time he is somewhat reserved about its potential for black film and video makers. "The mechanism of cable is a viable one for blacks, but whether the present companies will help us any more than commercial or public television has is questionable," says Bourne. He thinks that eventually blacks must develop their own marketing institutions if they want to exploit cable TV's potential.

CABLE TV SERVICES

What cable TV offers to the black entrepreneur goes beyond ownership and program supply. There are opportunities in the construction and maintenance of cable TV sys-

NEW BLACK-OWNED FRANCHISES

Blacks garnered two new cable TV franchises last year—in Newark and in East Cleveland. Both successes were the results of hard political and financial struggles.

Newark awarded its 115,000-home cable TV franchise to Connection Communications Corporation (CCC), a black-owned company. CCC is the brainchild of J. Barry Washington, formerly with Mayor Kenneth Gibson's Policy and Development Office, and Clarence Lilley, director of Newark's Theater of Universal Images. They were later joined by Calvin Reed, a senior Doubleday Publishing Co. executive, and Melvin LuSane, a lawyer.

Newark's 52-channel system will cost $9.5 million. Of this sum, $2.5 million will be provided by a syndicate of minority enterprise small business investment companies (MESBICs) led by Washington, DCs SYNCOM. The remainder will come from Prudential Insurance Company and the Philadelphia National Bank.

The Newark franchise had been awarded to New York's Teleprompter Company in 1969, but the company failed to complete construction and finally abandoned the franchise in 1974. The new franchise is not only expected to meet the city's cable needs but also to fill the gap left by the absence of a VHE television station in New Jersey. "We see this franchise as a means of unifying the community and helping to stabilize some of the gray areas. Hopefully, we will spur the renaissance that is evolving in Newark," says Calvin Reed.

The award of the East Cleveland franchise to Telecable Broadcasting of America made it the third franchise to be owned by a black company. The first was KBLE in Columbus, Ohio. Telecable had been put together by a diverse group of entrepreneurs—Al Quarles, a former TV executive, Zakee Rashid, a community activist, and two pro-football players, Ben Davis, formerly with the Cleveland Browns, and Thom Darden, who is still with the Browns. The four were successful in putting together a total financial package of $2.34 million. The sources of the funds were Industrial Development bonds marketed by the Ohio Development Finance Commission and a credit line from the Union Commerce Bank in Cleveland. SYNCOM will provide the additional financing. In spite of the relatively small size of the franchise, Telecable promises to have a major impact on the East Cleveland community. It plans to offer a 40-channel system with a heavily black-oriented program mix.

tems as well as in supplying cable equipment. Some black companies have already tapped into the supply and servicing side of cable TV. Among them are Chicago's Satellite Cablevision Systems (equipment supply), Pittsburgh's H.F. Carter, Inc. and Black Shield (construction) and New York's U.S. Antenna (cable installation).

"Cable TV is an industry that is opening up like mad," says Julius Johnson, president of U.S. Antenna. "It's definitely the business to be in." Johnson points to the labor intensiveness of the industry and its mammoth labor needs for the years ahead. "There's no reason why we can't be part of the labor force and share in the spoils," he exclaims. U.S. Antenna started as an installer of pay TV systems, but has had no difficulty in extending its activities into the installation of cable TV. Today, it even has a cable design group that designs electronic systems for installation in new apartment buildings to enable each resident to receive cable TV programs in efficient fashion.

GENERAL INFORMATION

Sylvia Marshall, NCTA, 1725 Massachusetts Ave. NW, Washington, DC
(202) 775-3622
William Johnson, KBLE, Inc., 124 So. Washington Ave., Columbus, OH 43216.
Tel. (614) 221-0692 or (614) 221-6022
Gracie Nettingham, Minorities in Cable, United Church of Christ Office of Communications, 105 Madison Ave., New York, NY 10016. (212) 683-5656

FINANCING

Terry Jones, SYNCOM, 1625 Eye St. NW, Suite 414, Washington, DC 20006.
(202) 293-9428

ENGINEERING

Early Monroe, 1444 Rhode Island Ave. NW, Suite 1018, Washington, DC 20005.
(202) 234-4150

ACCESS

Jabari Simama, Cable Atlanta, 1038 Peachtree St. NW, Atlanta, GA 30309.
(404) 874-8000

Ron Smith, of Pittsburgh's Black Shield Company believes that most blacks involved in the electrical industry or in electronic communications generally already have most of the experience required to work with cable TV. "They just haven't begun to think in terms of how their expertise can be utilized in the cable industry," he says. Black Shield, which has received a large construction contract from Warner Amex of Pittsburgh, was involved in electrical work before it recognized its assets in the cable TV field. Getting a cable TV contract was thus an easy transitional step.

WHAT OF THE FUTURE?

In the years ahead, cable TV promises to become a vital communications link in our society as it moves beyond its prime entertainment value into new and hitherto undreamed-of services: fire and security alarm systems, home shopping, electronic funds transfer, electronic newspapers and catalogs, data banks, opinion polls, and other similar electronic services. In this not-too-distant future a community without access to cable could be critically isolated from its neighbors and the world, speaking from a communications standpoint.

Blacks need not be apprehensive that cable TV will bypass their communities entirely. The cable industry is counting on them heavily as consumers. However, they must be wary of the "electronic redlining" that we mentioned earlier. This is the selective marketing of cable TV to upscale groups to the exclusion of all others.

Electronic redlining is not a fantasy. It is as real as the economic redlining practiced by many banks. It is based on the black community's limited experience with cable TV. In Newark, Teleprompter abandoned the franchise. In New York City, thousands of blacks in Upper Manhattan live without cable TV because it has not been made available by Teleprompter, the area franchise holder. Blacks there haven't assembled the political muscle to get service.

There are other dangers for the future as well, particularly the invasion of individual privacy. Cable TV has the potential to record more information about individuals than the most sophisticated electronic surveillance methods of today could dream of. Each time an individual would participate in an electronic poll, make a purchase, or retrieve data from a computer, the information could be recorded and stored. In the hands of the wrong people, abuse of such information could be devastating. "That is something we have to watch," warned Mike Dann in a recent interview. Dann was formerly with CBS-TV and is now a cable TV consultant to ABC.

However, the presense of blacks as franchise owners and partners, as decision-makers, and even as program suppliers, will reduce the dangers of the future as well as helping to create a new industry to serve the black community's needs. "Whatever may happen, now is the time to deal with cable," says St. Clair Bourne. "Cable is still in its formative stage and is still evolving and is susceptible to change. We must do it now."

BLACK EMPLOYMENT IN THE TOP 5 MSO CORPORATE OFFICES 1979–1980

Company	*Total Employees*	*Black Employees*	*Officials & Managers*	*Black Officials & Managers*
ATC	249	14	91	2
Cox	124	13	43	—
TCI	92	—	28	—
Teleprompter	252	20	77	6
Warner-Amex	243	16	68	1

SOURCE: Federal Communications Commission

Mr. **Mitchell**. Thus, again, the question is: What are the local opportunities in cable TV for this Nation's more than 13 million small and minority businesses?

On September 23, this subcommittee heard from nine witnesses. At that time, we heard that approximately 30 percent of all cable systems are owned by broadcasters, 20 percent by the program production industry and 18 percent by publishing chains. Furthermore, we were told that the top 13 cable companies account for more than 42 percent of the Nation's cable households.

Based on these statistics, we are led to believe that the pattern of the industry is obviously toward control by a few; another instance where the large companies apparently are gobbling up the small companies.

All of the previous witnesses testified to the need for more local small and minority business participation in the cable industry. Moreover, one witness seemed to suggest that the very definition of this industry is in question; and that the marketplace jury is still out on whether or not current developments tend to define cable TV as a public utility, broadband communication service or some other as yet unnamed home or office service.

In order to foster local small and minority business participation in this industry, our earlier witnesses have recommended actions ranging from Federal jawboning to limitations on the number of franchises or customers to one company.

Multiple cable franchise districts in large urban areas have been proposed, as well as closer screening of the consultants that advise the cities. Finally, one witness testified that local small and minority businesses have got to own the cable TV systems now in order to make sure that they are locked into the radical industry transformation which will take place over the next 10 years.

Our special counsel for this hearing, seated to my right, is attorney Derrick A. Humphries, and my staff assistant Ms. Sarah Etheredge of the Small Business Committee. We have a good group of witnesses with us today who will speak from firsthand experience from working in the cable industry.

The witnesses, in order, will be Mr. Thomas E. Wheeler, president of the National Cable Television Association; Mr. Stephen R. Effros, executive director of the Cable Antenna Television Association, Alexandria, Va.; Dr. William Douglas of the Gary Communications Group, Gary, Ind.; Mrs. Gracie Nettingham, EEO assistant and consultant of the Office of Communication of the United Church of Christ, New York, N.Y.; and Mr. Harry C. Hart, vice president, Nationwide Underground Cable Systems, Inc., New Jersey.

The issue is whether or not local small and minority businesses can afford to participate in owning, construction of, and servicing cable systems. We will now hear from Mr. Thomas E. Wheeler.

Mr. Wheeler, you are our first witness. Thank you for coming.

TESTIMONY OF THOMAS E. WHEELER, PRESIDENT, NATIONAL CABLE TELEVISION ASSOCIATION

Mr. **Wheeler**. Thank you, Mr. Chairman. I appreciate the opportunity to be with you this morning.

Mr. Chairman, as you indicated, I am Thomas Wheeler, president of the National Cable Television Association. There are four broad areas that we would like to discuss with you this morning as it relates to cable television and the activities of the minority community.

First, we will focus on overall opportunities for small business participation in our industry. Second, we will survey the status of minority ownership in key areas of the cable industry—system ownership, programing, equipment suppliers, and subcontracting.

Third, we will review the employment makeup of the cable industry today, and the steps we are taking to insure continued minority involvement through training programs.

Finally, we will look at the cable industry's encouragement of small business in general and minority employment and ownership in particular.

As you indicated in your opening remarks, cable television is in a period of transition. We are making the transition from a rural business to an urban and suburban service. Our industry started out offering retransmission of television signals to primarily rural communities that were unable to receive clear over-the-air reception. The classic rural system had an 8- to 12-channel capacity; urban systems under construction today will offer 34 to over 100 channels.

While cable is growing dramatically the cable industry is still predominantly rural. There are over 4,600 separate cable systems now serving more than 12,600 communities across the country. A look at these systems and some of the facts behind them is revealing. Less than 40,000 people are employed across the country in cable television. Almost three-fifths of the cable systems have fewer than five employees. Approximately three-quarters of the systems serve less than 3,500 subscribers and over two-thirds of the cable systems are located in rural fringe areas, an area outside of the television market.

Many cable operations are small businesses. While a great deal of attention is now focused on the large multiple system operators (MSO's), even the largest owns only 175 out of the 4,600 operational systems. The 25 largest cable companies together own less than 30 percent of the systems. On the other hand, over 1,500 of the over 4,600 cable systems are owned by smaller independent operators. These systems have been built, supplied, and managed by small business operations.

Even today, new franchises are being won by independents and companies are being built from scratch. As I understand, Mr. Mecure will testify this morning as to his experience in building a company from scratch, from nothing to seven or eight systems in the period of 1 year.

As you can see from this chart over here, the picture of cable today shows our greatest service in the rural and fringe counties, areas with low levels of black population. The chart shows only black population statistics because only these numbers are readily available. Cable has just begun to enter urban counties with large minority concentrations. This new growth is the key to opportunities for minority entrepreneurs for as the industry penetrates the urban areas, the potential for minority ownership is heightened.

There are, of course, several types of minority ownership in the cable business, including full or partial ownership of systems, programing services, equipment suppliers and subcontracting. Let's look at each of these.

SYSTEM OWNERSHIP

Today there are at least 16 predominantly black-owned and 11 predominantly Hispanic-owned franchises. While entry into classic cable markets is still possible, much of the activity in cable is in urban areas, areas which require substantial capital commitments. In these areas cable has developed joint ventures or equity arrangements with ownership groups.

Five recent franchise awards have been granted to companies with a joint venture ownership between an MSO and a local minority firm.

First, in 1979, the Pittsburgh, Pa., franchise was awarded to Warner-Amex Cable Communications; 20 percent of the system is owned by local black residents. The New Orleans, La., franchise was won by a firm 80 percent owned by Cox Cable Communications and 20 percent by minority business enterprises. The Cox system management has stated that 20 percent of all purchases would be from minority suppliers and 50 percent of the firm's 250–300 jobs would go to minorities in New Orleans. The Cincinnati, Ohio (Warner-Amex Cable Communications) and Fairfield, Conn. (Cable Vision Systems Development Corp.) franchises also have at least a 20-percent black ownership.

In Cincinnati, the 20-percent ownership went to local minority institutions. In Oklahoma City, Okla., Cox developed a unique arrangement with a black group. The system (Pan Oklahoma Communications) will be financed and built by Cox, and managed by a black group that has the option to buy the operation from Cox. This system has 8,000 subscribers now and the local black group has already started to purchase the system.

In addition, in numerous other large metropolitan areas where the franchising process is taking place, at least one of the potential applicants has either a joint venture with a minority firm or substantial minority equity participation. These cities include Tucson, Glendale, and Scottsdale, Ariz.; Bronx and Queens, N.Y., among others.

There is a definite trend in the industry toward joint venture franchise proposals with minority groups in urban areas. Minorities have become very active in the franchising process and have a track record of success. We expect this record to continue.

System ownership is only one entry into the complex cable business. Cable operators rely heavily on outside suppliers. Supplier ownership opportunities can be grouped into programing, construction, and equipment.

In the area of programing, three minority-owned small businesses are program suppliers. There is one black-owned satellite program network, Black Entertainment Television (BET). BET features black college sports, as well as feature films and specials oriented toward black audiences. BET, operational since early 1979, can be seen in over 8 million cable homes.

Begun on an absolute shoestring, BET has received significant financial assistance from a major MSO, as well as broad carriage by cable systems. Shortly, BET will have its own satellite transponder and a dramatically expanded program schedule, including original production. Also, two Chinese companies, Sino Broadcasting Corp. and Overseas Chinese TV provide 3½ hours of programing daily on Viacom's San Francisco system. The channel is a leased access channel, with the two companies providing commercially supported programs. Sino Broadcasting also markets programs in the New York area.

These examples highlight the broad opportunities open to minority programers in the rapidly expanding cable industry. Many of the major urban cable systems now under construction will have more than 100 channels available for programing. There is a trend toward cable narrowcasting, where programing is oriented to specific segments of the community. The development of programing offers extensive future opportunities for minorities.

Let's look at other business opportunities. Opportunities for other small businesses which are expanding as well. At present, NCTA has identified 20 minority firms that are actively engaged in providing hardware, software, and information services to subcontracting and cable systems. NCTA, as a means of encouraging operators to do business with these firms, will soon publish the directory of minority cable contractors.

Major multiple system operators such as Cox, Warner-Amex, Times Mirror, Cable Atlanta, and Heritage, among others, have established programs to seek out minority firms for cable contracts. New opportunities are surfacing constantly.

Thus, in all areas of cable-related ownership—systems, programs, suppliers, and subcontracting, there is substantial and increasing minority involvement.

Today, the cable industry as a whole and the National Cable Television Association in particular, exceed the Federal Communications Commission's EEO employment guidelines. The cable industry has established programs to improve this record through recruitment and training.

The Commission's EEO guidelines state that the industry should employ at least 50 percent of the minority percentage in the labor force overall and at least 25 percent of the minority labor market percentage in the top four categories (officials and managers, professionals, technicians, and sales force). In 1980, the cable industry as a whole employed 12.8 percent minorities in all cable units and 13.8 percent in headquarters units. Since the national minority employment population is 18.6 percent, this is over the 50-percent FCC standard.

I digress here to say that this is in a business where 58 percent of the cable systems have fewer than five employees.

In the top four job categories, the 1980 figures show that 10.3 percent of cable employees were minority in all cable employment units and 9.7 percent in headquarters units. Since the national industry's minority percentage is 10.2 percent, the cable industry exceeds the 25-percent guideline by a substantial margin.

NCTA currently employs 54 people in our District of Columbia headquarters, and 35 percent are minority. In the top four categories, 22.5 percent are minority. Both figures are well within the FCC guidelines using the Washington Metropolitan Area minority labor market figures.

The significant factor is that this was accomplished in an industry which has just begun to operate in areas with large numbers of minority workers. And it will continue to improve.

For instance, in the area of training programs the industry has established training programs both inside and outside its corporate structures. Minorities constitute a large percentage of both the trainees and graduates. An NCTA survey of the 18 cable training programs around the country found that 38 percent (610 of 1,602) of the trainees and 26 percent (315 of 1,203) of the graduates were minorities.

Almost all of the graduates are placed directly in the cable industry. While these training programs primarily concentrate on technical education, several companies, including Cox and Times Mirror, have established active, internal management training programs for minorities as well.

Times Mirror has given $5 million to fund communication education at Howard University, Atlanta's Clark College, Texas Southern University and other minority educational institutions. One of our largest MSO's, the American Television and Communications Corporation (ATC), will spend $8 million on training in 1981–82, including running their own training center in Denver.

Other large MSO's are also committing large sums to training personnel.

In addition to the ownership and employment opportunities we have discussed, it is important to highlight the concrete steps the industry is taking to insure future minority participation.

The policy of the National Cable Television Association, as stated in a resolution of its board of directors, encourages and supports minority involvement in all aspects of cable television, including system ownership. The board established a minority affairs committee, now chaired by Bill Spiesel of Cox Cable Communications, to promote these activities.

The NCTA also has established a minority legal intern program which provides 1 year of training and employment experience for a senior law student. In addition, we have created the full time position of director of human resources. The person who fills this position is charged with the responsibility of promoting equal opportunity in the industry and encouraging specific minority related ownership and employment programs. Under the leadership of the director of human resources, NCTA has offered workshops and panels concerning minority ownership and employment, published the Careers in Cable handbook outlining opportunities in the industry, the Directory of Cable Training programs, and an EEO program manual.

NCTA will soon publish a Directory of Minority Cable Contractors, and a listing of financial sources for ownership groups. The minority affairs committee is developing a 2-day economic development symposium with workshops covering franchising, system construction, cable operations, programing, and advertising. This will take place in early 1982.

Minorities have played and will continue to play a significant role in the cable business. Each cable system reflects the community it serves. That is a key point that we can focus on as the morning goes on.

As cable wires the urban areas, it is critical that the total community be involved. We believe we are meeting that challenge and that minority opportunities in cable television will continue to grow.

Thank you, Mr. Chairman.

[Mr. Wheeler's prepared statement with attachments follow:]

PREPARED STATEMENT OF THOMAS E. WHEELER, PRESIDENT, NATIONAL CABLE TELEVISION ASSOCIATION

Mr. Chairman and members of the Subcommittee, my name is Thomas E. Wheeler, and I am President of the National Cable Television Association. The Association represents over 1750 cable systems serving more than 70 percent of the nation's 21 million cable subscribers. We appreciate the opportunity to present our views on small business ownership and employment in the cable television industry.

Mr. Chairman, a cable television system is a local business. Whether the system is owned by a large corporation or by small businessmen, in order to be successful, it must reflect the community it serves. System ownership, however, is only one entry into the multifaceted cable business. The industry also offers diverse opportunities for the suppliers of programming, hardware and services.

There are four broad areas we will discuss today. In the whirlwind of publicity concerning the potential of the new technologies, we sometimes lose sight of the realities of our business. We will provide you with a "real-world" view of cable today. First, we will focus on the overall opportunities for small business participation in our industry.

Second, we will survey the status of minority ownership in key areas of the cable industry--system ownership, programming, equipment suppliers and subcontracting.

Third, we will review the employment makeup of the cable industry today, and the steps we are taking to ensure continued minority involvement through training programs.

Finally, we will look at the cable industry's encouragement of small business in general and minority employment and ownership in particular.

CABLE: AN INDUSTRY IN TRANSITION

Cable television is an industry in transition. We are growing, expanding and innovating in the services we provide to the consumer. However, one facet of cable is growing faster than others--the publicity surrounding the industry's exciting progress and promise. It is difficult to go for a week without reading in the press about cable's expansion into new urban areas and the development of new programming alternatives. But it is important for this committee to understand the true nature of the industry, as well as our dynamic future.

Cable is growing. At the beginning of 1977, cable served 11.9 million subscribers. Today over 21 million American households receive cable television service.[1] By 1985, industry analysts predict we will nearly double today's number of subscribers.[2]

Cable is making the transition from a rural business to an urban and suburban service. Our industry started out offering retransmission of television signals to primarily rural communities that were unable to receive clear over-the-air reception. The classic rural system had an 8 to 12 channel capacity; urban systems under construction today will offer 34 to over 100 channels.

These channels are being programmed with alternative fare. Each cable system designs a service package to meet the individual needs of its community. The operator can choose from satellite delivered networks specializing in news, sports, women's interests, movies, children's programs, minority programs and many more. Over 40 different programming services are now available, and many more are on the drawing board.[3] Some of these are being offered by small businesses and non-profit groups.

Cable systems are also expanding their offerings of locally originated programming produced by the system and the community. Many recent franchise grants include provisions which reserve channels for minority programming. Moreover, cable's potential for two-way interactive capacity is making possible a wide variety of enhanced broadband services. Experiments are currently being conducted in "shop-at-home", home energy management, viewdata, teletext, public opinion polling, and home security services.

Despite all this growth and change, the cable industry is still predominantly rural. There are over 4,600 separate cable systems now serving more than 12,600 communities.4/ A look at these systems is revealing:

- Less than 40,000 people are employed in all cable operations.5/

- Almost three-fifths (58 percent) of cable systems have less than 5 employees.6/

- Approximately three quarters (74 percent) of the systems serve less than 3,500 subscribers.[7]

- o Over two-thirds (68 percent) of cable systems are located in rural/fringe areas (outside all television markets).[8]

Many cable operations are small businesses. While a great deal of attention is now focused on the large Multiple System Operators (MSOs). even the largest owns only 175 out of the 4,600 operational systems.[9] The 25 largest cable companies together own less than thirty percent of the systems.[10] On the other hand. over 1,500 of the over 4,600 cable systems are owned by smaller independent operators.[11] These systems have been built, supplied and managed by small business operations. Even today, new franchises are being won by independents.

An example of one of these independents is Potomac Valley Television Co.. Inc. in Cumberland. Maryland. This system serves over 23,000 subscribers and offers Home Box Office as a pay service. Potomac Valley TV was started in 1950 by local entrepreneurs and is still locally owned.[12] In the near future the owners plan to double the 13 channels now being offered.

Despite the constant growth of cable systems and services offered, a significant portion of the industry will always remain small and rural. However, we are now extending service to large cities where minority populations are concentrated.

As you can see from this chart, the picture of cable today shows our greatest service in the rural and fringe counties, areas with low levels of black population. The chart shows only black population statistics because only these numbers are readily available. Cable has just begun to enter urban counties with large minority concentrations. This new growth is the key to opportunities for minority entrepreneurs.

MINORITY OWNERSHIP OPPORTUNITIES ARE EXPANDING

As the industry penetrates the urban areas, the potential for minority ownership is heightened.

There are, of course, several types of minority ownership in the cable business, including full or partial ownership of systems, programming services,

Chart 1

COMPARISON OF CABLE AND BLACK POPULATION PENETRATION - BY COUNTY SIZE

	County Size			
	A (Urban)	B (Suburban)	C (Fringe)	D (Rural)
Cable Penetration[1]	9.9%	22.9%	39.3%	24.7%
Black Population[2] Penetration	15.2%	10.9%	8.2%	9.4%

[1] A.C. Nielsen

[2] Market Statistics Inc.

A Counties: Located within the 25 largest Metro Rating Areas

B Counties: Not included in A with a population over 150,000 or located within a Metro Rating Area with a population over 150,000

C Counties: Not included in A or B with a population over 35,000 or located within a Metro Rating Area with a population over 35,000

D Counties: Not included in A, B, or C

equipment suppliers and subcontracting. Let's look at each of these.

System Ownership

Today, there are at least sixteen predominantly black-owned and eleven predominantly Hispanic-owned franchises.

Of the black-owned franchises, four are operational (Columbus, Ohio; Metlakatla, Alaska; East Cleveland, Ohio; Mound Bayou, Mississippi) and the remainder either under construction or recently awarded. These systems can be as large as the Newark, New Jersey system or as small as the Metlakatla, Alaska system. The East Cleveland, Ohio, system has been so successful that the owners were just recently awarded a franchise for the suburbs of Dayton, Ohio--and Telecable Broadcasting, the group that owns East Cleveland is aggressively pursuing other opportunities.

Of the Hispanic-owned systems, five are operational (Grant and Espanola, New Mexico; Eatonville and Bonney Lake, Washington; and Mayport, Florida) with the rest being in various stages of construction.[13/] Alex Mercure of Mercure Telecommunications started acquiring cable systems a little over a year ago and has one operational system (Mayport, Florida) and six recently awarded franchises as well. What this indicates is that minority small businessmen are purchasing and winning cable systems today (See Exhibit 1).

There are other forms of minority ownership in cable systems. Since most of the remaining cable franchises are in urban areas, and these require substantial investment of capital, the cable industry has developed joint ventures or equity arrangements with minority firms and ownership groups. At least five recent franchise awards have been granted to companies with a joint venture ownership between a MSO and a local minority firm.

In 1979, the Pittsburgh, Pennsylvania franchise was awarded to Warner-Amex Cable Communications. Twenty-percent of the system is owned by local black residents. The New Orleans, Louisiana franchise was won by a firm 80 percent owned by Cox Cable Communications and 20 percent by minority business enterprises. The Cox system management has stated that 20 percent of all purchases would be from minority suppliers and 50 percent of the firm's 250-300 jobs would go to minorities in New

Orleans.[14/] The Cincinnati, Ohio (Warner-Amex Cable Communications) and Fairfield, Connecticut (CableVision Systems Development Corporation) franchises also have at least a 20 percent black ownership. In Cincinnati, the 20 percent ownership went to local minority institutions. In Oklahoma City, Oklahoma, Cox developed a unique arrangement with a black group. The system (Pan Oklahoma Communications) will be financed and built by Cox, and managed by a black group that has the option to buy the operation from Cox. This system has 8,000 subscribers now and the local black group has already started to purchase the system.[15/]

In addition, in numerous other large metropolitan areas where the franchising process is taking place, at least one of the potential applicants has either a joint venture with a minority firm or substantial minority equity participation. These cities include Tucson, Glendale, and Scottsdale, Arizona; Bronx and Queens, New York among others.

There is a definite trend in the industry toward joint venture franchise proposals with minority groups in urban areas. Minorities have become very active in the franchising process and have a track record of success. We expect this record to continue.

Other Forms of Minority Ownership Participation in Cable

System ownership is only one entry into the complex cable business. Cable operators rely heavily on outside suppliers. Supplier ownership opportunities can be grouped into programming, construction and equipment.

Programming

Three minority-owned small businesses are program suppliers. There is one black-owned satellite program network, Black Entertainment Television (BET). BET features black college sports, as well as feature films and specials oriented toward black audiences. BET, operational since early 1979, can be seen in over 8 million cable homes.[16/] Begun on an absolute shoestring, BET has received significant financial assistance from a major MSO, as well as broad carriage by cable systems. Shortly, BET will have its own satellite transponder and a dramatically expanded program schedule, including original production. Also, two

Chinese companies, Sino Broadcasting Corporation and Overseas Chinese TV provide three and one-half hours of programming daily on Viacom's San Francisco system. The channel is a leased access channel, with the two companies providing commercially supported programs. Sino Broadcasting also markets programs in the New York area.[17/]

These examples highlight the broad opportunities open to minority programmers in the rapidly expanding cable industry. Many of the major urban cable systems now under construction will have more than 100 channels available for programming. There is a trend toward cable narrowcasting, where programming is oriented to specific segments of the community. The development of programming offers extensive future opportunities for minorities.

Other Business Opportunities

Opportunities for other small businesses are expanding as well. At present, NCTA has identified 20 minority firms that are actively engaged in providing hardware, software and information services to subcontracting and cable systems. NCTA, as a means of encouraging operators to do business with these firms, will soon publish a Directory of Minority Cable Contractors (See Exhibit 2). Major multiple system operators such as Cox. Warner-Amex. Times Mirror, Cable Atlanta and Heritage, among others. have established programs to seek out minority firms for cable contracts. New opportunities are surfacing constantly.

Thus, in all areas of cable-related ownership -- systems, programs, suppliers, and sub-contracting. there is substantial and increasing minority involvement.

EMPLOYMENT OPPORTUNITIES ARE SIGNIFICANT AND GROWING

Today, the cable industry as a whole and the National Cable Television Association in particular, exceed the Federal Communications Commission's EEO employment guidelines. The cable industry has established programs to improve this record through recruitment and training.

The Commission's EEO guidelines state that the industry should employ at least 50 percent of the minority percentage in the labor force overall and at least 25 percent of the minority labor market percentage in the top four categories (officials and managers, professionals, technicians, and sales force). In 1980, the cable industry as a whole employed 12.8 percent minorities in all cable units and 13.8 percent in headquarters units. Since the national minority employment population is 18.6 percent, this is over the 50 percent FCC standard (See Exhibit 3).

In the top four job categories, the 1980 figures show that 10.3 percent of cable employees were minority in all cable employment units and 9.7 percent in headquarters units. Since the national industry's minority percentage is 10.2 percent, the cable industry exceeds the 25 percent guideline by a substantial margin.

NCTA currently employs 54 people in our District of Columbia headquarters, and 35 percent are minority. In the top four categories, 22.5 percent are minority. Both figures are well within the FCC guidelines using the Washington Metropolitan Area minority labor market figures.

The significant factor is that this was accomplished in an industry which has just begun to operate in areas with large numbers of minority workers.

Training Programs

Over the past few years. the industry has established training programs both inside and outside its corporate structures. Minorities constitute a large percentage of both the trainees and graduates. An NCTA survey of the 18 cable training programs around the country. found that 38 percent (610 of 1,602) of the trainees and 26 percent (315 of 1,203) of the graduates were minorities. Almost all of the graduates are placed directly in the cable industry (See Exhibit 4). While these training programs primarily concentrate on technical education, several companies, including Cox and Times Mirror, have established active internal management training programs for minorities as well. Times Mirror, has given $5 million to fund communication education at Howard University, Atlanta's Clark College, Texas Southern University and other minority educational institutions.[18/] One of our largest MSOs, the American Television and Communications Corporation, (ATC) will spend $8 million on training in 1981-82.[19/] Other large MSOs are also committing large sums to training personnel.

has offered workshops and panels concerning minority ownership and employment, published a *Careers in Cable* handbook outlining opportunities in the industry, a *Directory of Cable Training Programs*, and an EEO program manual.

NCTA will soon publish a *Directory of Minority Cable Contractors*, and a listing of financial sources for ownership groups. The Minority Affairs Committee is developing a 2-day Economic Development Symposium with workshops covering franchising, system construction, cable operations, programming and advertising. This will take place in early 1982.

Minorities have played and will continue to play a significant role in the cable business. Each cable system reflects the community it serves. As cable wires the urban areas, it is critical that the total community be involved. We believe we are meeting that challenge and that minority opportunities in cable television will continue to grow.

Mr. Chairman, I appreciate the opportunity to come before this Subcommittee to present the cable industry's views. I will be happy to respond to any questions you and the members of the Subcommittee might have.

Footnotes

1. A. C. Nielsen, July, 1981.

2. Donaldson, Lufkin and Jenrette, Cable Television 1981, February, 1981.

3. Cablevision, September, 1981.

4. Estimates from Television Digest, 1981 Television Factbook.

5. FCC Employment Statistics, July 20, 1981.

6. FCC Employment Statistics, July 20, 1981.

7. Television Digest, 1980, Television Factbook, Services Volume. Figures as of October 15, 1979.

8. Television Digest, 1980, Television Factbook, Services Volume.

9. NCTA research survey, September 28, 1981.

10. Ibid.

11. NCTA industry estimate. The majority of smaller systems are owned and operated by small independents and Television Digest reports that 74 percent of the systems serve less than 3,500 subscribers.

12. Personal telephone interview with system manager, September 22, 1981.

13. NCTA research survey, September, 1981.

14. New Orleans City Ordinance, No. 8205, May 28. 1981, Section 11.2 and 11.5.

15. Personal telephone interview with Robert Allen, General Manager, September 22, 1981.

16. Cablevision, Cable Statistics, September 28, 1981, p. 80.

17. Spanish International Network (SIN) and Galavision offer Hispanic programming nationally. Both are owned by Mexican nationals.

18. TVC, August 15, 1981, p.83.

19. TVC, August 15, 1981, p.85.

EXHIBITS

EXHIBIT 1	Minority-Owned Franchises
EXHIBIT 2	Directory of Minority and Female Owned Businesses in Cable
EXHIBIT 3	Cable Television Minority Employment Comparisons
EXHIBIT 4	Minority Enrollment in Training Schools

EXHIBIT 1

Minority-Owned Franchises

	City	Minority	System	President	Operational	Recently Awarded/Other
1.	Columbus, Ohio	Black	KBLE, Ohio	William T. Johnson	X	
2.	Metlakatla, Alaska	Black	Bentley Co.	David Bentley	X	
3.	East Cleveland, Ohio	Black	Telecable Broadcasting	Thom Darden	X	
4.	Newark, New Jersey	Black	Connection Communications	J. Barry Washington		X
5.	Tuskegee, Alabama	Black	Video Vision, Inc.	Elias Pugh		X
6.	Inkster, Michigan	Black	The Barden Co.	Don Barden		X
7.	Dayton, Ohio suburbs	Black	Telecable Broadcasting	Thom Darden		X
8.	Royal Oak, Michigan	Black	The Barden Co.	Don Barden		X
9.	Holly Hill, South Carolina	Black	Small Cities Communications	Robert W. Drakeford		X
10.	Santee, South Carolina	Black	Small Cities Communications	Robert W. Drakeford		X
11.	Estill, South Carolina	Black	Small Cities Communications	Robert W. Drakeford		X
12.	Lynchburg, South Carolina	Black	Small Cities Communications	Robert W. Drakeford		X
13.	Mound Bayou, Mississippi	Black	Delta Development and Management Corp.	Charles Bannerman	X	
14.	Tunica, Mississippi	Black	Delta Development and Management Corp.	Charles Bannerman		X
15.	Tchula, Mississippi	Black	Delta Development and Management Corp.	Charles Bannerman		X
16.	Grambling, Louisiana	Black	Delta Development and Management Corp.	Charles Bannerman		X

Minority-Owned Franchises

	City	Minority	System	President	Operational	Recently Awarded/Other
17.	Grants, New Mexico	Hispanic	Tele-vu, Inc.	Eddie Pena	X	
18.	Eatonville, Washington	Hispanic	Eatonville Cable	Andrew Vallejo	X	
19.	Bonneylake, Washington	Hispanic	Bonneylake Cable	Andrew Vallejo	X	
20.	Espanola, New Mexico	Hispanic	Southwest Cable	Dennis Salazar	X	
21.	Mayport, Florida	Hispanic	Mercure Telecommunications	Alex Mercure	X	
22.	East Los Angeles, California	Hispanic	Buena Vista Video	E. Monteczuma		X
23.	Bernalillo, New Mexico	Hispanic	Mercure Telecommunications	Alex Mercure		X
24.	Holiday, Texas	Hispanic	Mercure Telecommunications	Alex Mercure		X
25.	Hagerman, New Mexico	Hispanic	Mercure Telecommunications	Alex Mercure		X
26.	Dexter, New Mexico	Hispanic	Mercure Telecommunications	Alex Mercure		X
27.	Mountainaire, New Mexico	Hispanic	Mercure Telecommunications	Alex Mercure		X

EXHIBIT 2

DIRECTORY OF MINORITY AND FEMALE OWNED BUSINESSES IN CABLE

Patriot Electronics, Inc.
500 B Merrick Road
Lynbrook, NY 11563

CEO: Holly Conner, President
(516) 599-8881

P/S: Electronic equipment
Yrs. in business: 5
Contracts: Cox
NCTA Member: No

The Project, Inc.
P.O. Box 11169
Atlanta, GA 30310

CEO: Ernest L. Dixon
(404) 753-1146

P/S: passive hardware, drop cable, tools
Yrs. in business: 2
Contracts: Cable Atlanta, Southern TelCom, Warner-Amex
NCTA Member: Yes

Henwarr, Inc.
Street Road Industiral Park
340 Constance Drive, Bldg. #3
Warminster, PA 18974

CEO: Rayton Gerald
(215) 675-4104

P/S: Wire, Cable & Tubing
Yrs. in business: 1
Contracts: Cox Cable, Cable Atlanta, Scientific Atlanta
NCTA Member: No

Boyd Cable Services, Inc.
P.O. Box 112
Dayton, OH 45417

CEO: Robert Boyd
(513) 221-0629

P/S: Strand Mapping, Make Ready Survey, Marketing, Construction, Installation, Splicing.
Yrs. in business: 24 in building and construction
Contracts: initial contact stage
NCTA Member: No

LBI Electro-Optics Corporation
10777 Harry Hines Blvd.
Dallas, TX 75220

CEO: A. Gus Warren
(214) 358-4251

P/S: Electrical/electronic supplies, manufacturing, and distribution
Yrs. in business: 4½
Contracts: Cox Cable, Warner Amex, Cable Atlanta, Valley Cable
NCTA Member: Yes

EDM & Associates
1444 Rhode Island Avenue, N.W.
Suite 1018
Washington, D.C. 20005

CEO: Early D. Monroe, Jr.
(202) 234-4150

P/S: Engineering Consultants
Yrs. in business: 2
Contracts: FCC, Viewline, Inc.
NCTA Member: Yes

Roberts Roberts & Associates
Chemical Building
721 Olive Street - Suite 721
St. Louis, MO 63101

CEO: Michael V. Roberts
(314) 231-4622

P/S: Consultants
Yrs. in business: 2
Contracts: Tele Communications Inc. Ultra Communications, Small Cities Communications
NCTA Member: Yes

Satellite Communications Systems, Inc.
1308 W. 105th Street
Chicago, IL 60643

CEO: Mike Jarard
(312) 779-1900

P/S: Hardware equipment, passive and active electronics, underground and aerial construction material, turnkey studios, etc.

Satellite Comm. (cont'd.)

Yrs. in business: 6
Contracts: Warner-Amex, Cox, Times Mirror, Cable Communication General, Heritage Communications
NCTA Member: Yes

Syndicated Communications, Inc.
Suite 414
1625 Eye Street, N.W.
Washington, D.C. 20006

CEO: Herbert Wilkins, President
(202) 293-9428

P/S: Venture capital company/financial consultation: Providing capital and financial consultation to companies involved in ownership or operation of cable systems
Yrs. in business: 5
Contracts: KBLE; Buena Vista CTV, TBA East Cleveland
NCTA Member: Yes

RLP Corporation
1065 Gordon Street, S.W.
Suite 202
Atlanta, Georgia 30310

CEO: Robb L. Pitts, President
(404) 753-5700

P/S: Coaxial cable, distribution hardware, Headends, converters, earth stations - construction supply company
Yrs. in business: 1½ (reactivated)
Contracts: Cox (for 10 systems)
NCTA Member: No

AMTAR Incorporated
401 W. Peachtree Street
Suite 3150
Atlanta, Georgia 30308

CEO: Edward Cooper
(404) 688-6407

P/S: future programming on a cable channel
Yrs. in business: 7
Contracts: Birmingham Cable
NCTA Member: No

Creative Cable Developers
P.O. Box 364
5080 Sinclair Road, Suite 109
Columbus, OH 43081

CEO: Richard Rodgers, Operations Di
(614) 431-1199

P/S: Construction
Yrs. in business: 2
Contracts: All-American Cablevision Audubon, Coaxial Communications, Warner (sub-contract), KBLE / Columbus
NCTA Member: No

Beowulf
P.O. Box 5168
Huntsville, AL 35805

CEO: Columbus Sanders
(205) 859-0004

P/S: Raw cable; cable with connecte connecters
Yrs. in business: 12
Contracts: None
NCTA Member: No

Bianchi Enterprises
P. O. Box B 324
Columbia, MD 21045

CEO: Antoinette Bianchi
(301) 669-7500

P/S: Electronics manufacturing firm
Yrs. in business: 4½
Contracts: Scientific Atlanta, Cox Cable
NCTA Member: No

Connection Communications Corp.
24 Commerce Street, Suite 430
Newark, NJ 07102

CEO: J. Barry Washington
(201) 643-6161

P/S: cable consultant, operator
Yrs. in business: 2
Contracts: Suburban, Controlled, Mik-American Cable
NCTA Member: No

Valerie Shaw, M.P.R.
3969 West Seventh Street
Los Angeles, CA 90005

CEO: Valerie Shaw
(213) 931-9447

P/S: writing for programming
Yrs. in Business: 5
Contracts: None
NCTA Member: No

Jeffalyn Johnson & Associates, Inc.
5203 Lessburg Pike
Suite 1210
Falls Church, VA 22041

CEO: Jeffalyn Johnson, Ph.D.
(703) 578-4633

P/S: Management & Organization Specialists: T.V. Market Analysis, Training for Community Time
Yrs. in Business: 4
NCTA Member: No

International Telecommunications Projects, Inc.
1750 Pennsylvania Avenue, N.W.
Suite 1112
Washington, D.C. 20006

CEO: Shakespeare Brissett, President
(202) 347-6610

P/S: Hardware and electrical supply; strand and installation materials
Yrs. in business: 1½
Contracts: Cox Cable
NCTA Member: No

Nationwide Underground Cable
523 North Whitehorse Pike
Magnolia, NJ 08049

CEO: Ronald L. Wilson
(609) 435-0431

P/S: underground construction; splicing; balancing service drops; landscaping services
Yrs. in Business: 2
Contracts: Clear Cable Television/Lindenwold, NJ: Audobon Electronics Cable Systems/Audobon, NJ; New York Times Cable T.V./Audobon, NJ
NCTA Member: Yes

EXHIBIT 3

Cable Television Minority Employment Comparisons

	% minority overall	% minority top 4 categories*
1. All Cable Systems	12.8	10.3
2. All Cable Headquarters Units	13.8	9.7
3. NCTA	35.0	22.5
4. All Industries	18.6	10.2

Source: FCC, Cable Television Industry Statistics, 1980; NCTA employment 1981 data; EEOC data, 1979.

*The top four categories are: Officials and Managers, Professionals, Technicians and Sales Workers. For NCTA, the top four job categories consist of Assistant Director and above. For the D.C. Metropolitan area, the figures are 27.3 percent minority overall and 16.1 percent minority in the top four categories.

EXHIBIT 4

MINORITY ENROLLMENT IN TRAINING SCHOOLS

PROGRAM NAME	TOTAL ENROLLED	MINORITY ENROLLED(%)	TOTAL GRADUATED	MINORITY GRADUATED(%)
Cablevision Training Center (TPT)	76	60(79%)	73	59(81%)
Cox Cable Communications	40	NA	40	NA
San Diego Community College	180	NA	108	NA
Garfield Skills Center	211	187(87%)	136	NA
Indianapolis Alliance for Jobs	50	31(62%)	41	NA
University College-Cincinnati	48	6(12%)	Program still in progress	
Opportunities Industrialization Center	15	14(93%)	Program still in progress	
Maricopa County Skills Center	70	34(48%)	45	NA
RETS Electronic	305	82(27%)	278	72(26%)
Middlesex Community College	90	4(4%)	30	1(3%)
Omega School of Communications	41	23(56%)	39	22(56%)
East Bay Skills Center	140	126(90%)	132	120(91%)
ATC Training Center	95	20(21%)	95	20(21%)
BOCES	48	16(33%)	48	16(33%)
Wadena Community College	36	5(14%)	34	3(9%)

Program Name	Total Enrolled	Minority Enrolled (%)	Total Graduated	Minority Graduated (%)
W. Wisconsin Technical Institute	42	2(5%)	30	2(6%)
Chilicothe Area Vocational School	75	0 -	42	0 -
Wisconsin Indian Head	40	0 -	36	0 -
TOTALS	1,602	610 (38%)	1,203	315 (26%)

Source: NCTA Survey of Training Schools, 1981.

Mr. MITCHELL. Thank you. That was a very comprehensive statement, filled with valuable information and data. I must confess I know of the National Cable Television Association. I don't know much about you though. Do you have a board of directors?

Mr. WHEELER. We have a board of 30 people who are operators and suppliers.

Mr. MITCHELL. Is that 30?

Mr. WHEELER. Right.

Mr. MITCHELL. Are there any ethnic breakdowns, how many blacks, how many Hispanics?

Mr. WHEELER. There is one black and one woman. About 50 percent of the board is composed of the major companies that control about 70 percent of the subscribers so actually the board is skewed toward the small businessman in the communities rather than the large corporate MSO in terms of voting power.

Mr. MITCHELL. You have 1 black out of 30?

Mr. WHEELER. Right.

Mr. MITCHELL. How many women?

Mr. WHEELER. One.

Mr. MITCHELL. How many Hispanics?

Mr. WHEELER. None.

Mr. MITCHELL. Any other ethnic group?

Mr. WHEELER. No.

Mr. MITCHELL. That is 2 out of 30?

Mr. WHEELER. Yes.

Mr. MITCHELL. Have you had difficulty in getting minorities to serve on your board of directors, or why is there such little participation?

Mr. WHEELER. I think it relates to the topic of your hearing. This is an industry in which minority participation is increasing but still at minimal stages or the early stages. That is reflected in the makeup of the board.

I think it is significant that 2 years ago there were no women and no blacks. I am sure that down the path, as more and more women, Hispanics, blacks, whatever, are coming into ownership positions, that will be reflected in the makeup of the board of directors.

Mr. MITCHELL. Fifteen of the thirty on your board are owners?

Mr. WHEELER. I don't understand what you mean by owners.

Mr. MITCHELL. You said 50 percent of your board is made up of——

Mr. WHEELER. Of the small operators, right.

Mr. MITCHELL. I am fascinated by the opportunities for programing for minorities. Yet I have some difficulties. Program production industries now own about 20 percent of all cable, as I understand it, and in our last hearing we had the distinct impression—there was direct testimony to the effect that the other types of owners are forming mergers or at least operational understandings with the program production industry.

That would suggest to me that as this nexus takes place the opportunities for minority programing will become increasingly difficult.

Mr. WHEELER. I don't think that necessarily holds, Mr. Chairman. First of all, I mentioned in my testimony Black Entertainment Television and I happen to know the shoestring they started on because I was involved in helping them get the loan to get going. Then a major multisystem operator got involved in a big way with some other substantial dollar commitments. But I think what you are finding is as a result of the franchising process more and more communities are saying that they want an active voice in their community for minority groups in terms of programing activities, programing opportunities.

Most every major franchise that is granted specifies this. Pittsburgh, for instance, to pick one, wants—wanted, demanded, and got five regional studios spread throughout the city for local community groups to do programing.

That does several things. One, that creates the facilities through which people can get into programing opportunities themselves.

Two, it creates an outlet for local expression. Local groups do not need a network kind of operation to get involved.

Three, it creates a training ground for personnel that can then move on into other bigger and better activities if you will.

And, four, the very fact that these centers exist tends to create the demand for the program, to stimulate people to create the programing.

So, I think there is a substantial amount of programing coming on line, substantial minority opportunities that will result from that.

Mr. **Mitchell**. There are two major positions with regard to cable TV in urban centers. One group insists there should be a single franchise because it is easier to handle. Others insist that multiple franchises mean multiple opportunities. What is your thinking on the multiple franchise?

Mr. **Wheeler**. Our thinking is that that is something out of our control. When we go to a city to participate in the franchising process, we are participating in rules that have been developed by that community. Some communities say one across-the-board franchise. Some cut them up.

We are playing by the ground rules that are established by the local communities themselves.

Mr. **Mitchell**. Absent the ground rules, what would your position be? Suppose you could come into the city and make the decision? What would it be?

Mr. **Wheeler**. You mean we could say do you want it one lump or do you want it cut up?

Mr. **Mitchell**. Suppose you could come in and say: "Here is our position, our position is that a single system is best for *x* reasons or a multiple system is best for *x* reasons." Absent the local ground rules, what position would you take?

Mr. **Wheeler**. What we have found is while that is an interesting hypothetical question, it is not a realistic question because the cities are establishing how it is going to work, period.

I grew up in a community, for instance, where the local broadcaster had a great deal of sway and he determined the way to stop cable was to cut the city up into five parts so that no one part could be economically feasible. And he convinced the city council to do that and that is how he kept cable out for years and years.

So I am not sure you can make a generalization across the board. It has to do with the economics of the situation. But I think what we are finding, Mr. Chairman, is that more and more cities and communities are talking in terms of multiple franchises.

Mr. **Mitchell**. I am trying to get your position.

Mr. **Wheeler**. Our problem is we don't have a position on that because our position is established by the folks who set the ground rules when we go in.

Mr. **Mitchell**. Even if I said temporarily you could block out the ground rules—hypothetical, of course—but I want to know where you would stand on multiple versus single.

Suppose you went to the city consultant and the consultant said, "I don't know which way to go on cable, would you advise me"; then how would you handle that?

Mr. **Wheeler**. That is hypothetical.

Mr. **Mitchell**. I want to know from you, though.

Mr. **Wheeler**. I think again it is very difficult to generalize. I think what you will find is there are more and more situations around the country where there are situations being worked out between MSO's and local minority groups to divide up the town.

I think you will find, for instance, that in the near term there will be announced several plans whereby the MSO and a minority group will bid on the package as a team, but with the understanding that this is your part, I will service this part, we will service this part, and I will help you with the debt financing that you need to service this part of the town. You will see more and more of these kinds of things coming up.

I don't think they lend themselves to generalizations, however.

Mr. **Mitchell**. I can't pin you down. I tried hard, but couldn't make it. I will come back to that later maybe.

According to your testimony you have done very, very well in complying with and exceeding the FCC guidelines with reference to employment opportunities for minorities. It appears that this administration, the present administration, is moving away from any kind of affirmative action guidelines and I would assume that the FCC may well drop its guidelines before the end of this administration.

How well do you think you would do without the benefit of guidelines? You have done exceedingly well with them.

Mr. **Wheeler**. I would hope first of all the FCC does not drop its guidelines. I would be willing to go on the record and be willing to urge the Commissioners and the administration not to do that.

Second, I understand that last week the Chairman of the FCC created a committee of the Commission to enhance minority activities not only in cable but in all communications. One of our board members is serving on this committee. I would hope that they are going to be moving ahead in doing this.

Whether or not there are guidelines, however, I believe there are responsibilities and I think what we have tried to undertake in the association is to make cable operators aware of their responsibilities and to challenge them to live up to if not exceed those responsibilities.

I think that there are some basic economic facts right now in terms of our need for manpower, in terms of our need for equipment, programs, and supplies. It is going to mean that we will be doing that.

Mr. **MITCHELL**. Just two more quick questions. I have a lot more questions including your opinion about multiple franchise, but I will get back to that.

You made an interesting statement in your testimony. You stated that you really wanted total community involvement in cable.

Mr. **WHEELER**. That is the secret of cable.

Mr. **MITCHELL**. We always have the problem of semantics. How would you attempt to define total community involvement?

Mr. **WHEELER**. I think what we are trying to do, Mr. Chairman, is break out of the television mold and the television mold has been—there are three guys sitting along 6th Avenue, New York, that tell you what you are going to see and, like it or not, you are going to see it.

What we are trying to say is that we want to attract people to the television set. There is an interesting statistic. That is one-third of the population in this country does two-thirds of the television watching. That means two-thirds of the people are choosing to get up and walk across the room and turn off the set rather than turn to something else.

We think that our market, our future, our role in the community is to reach that other two-thirds. We are not going for the one-third that will watch Laverne and Shirley or $1.98 Beauty Contest or whatever is on. We are going toward the other two-thirds.

We are saying what do we have to have to bring them to the set. We have to have a kind of diversity in programing that is not otherwise available. We have to have special interest programing. We have to have programing directed at specific groups and we are very frankly—in an earn-while-you-learn posture—on that saying what is it we can put together that will stimulate the demand to justify the high capital cost in these areas.

Mr. **MITCHELL**. Am I right in assuming that by total community involvement you are referring to ownership, participation, programing, and so forth?

Mr. **WHEELER**. Across the board; yes, sir.

Mr. **MITCHELL**. I think that is essential, too, if for no other reason than the vulnerability of cable TV in cities. It is an enormous investment. The black population is totally excluded from involvement and if some good black activists in cities say "Let's activate a boycott"——

Mr. **WHEELER**. It sounds like economic suicide to me.

Mr. **MITCHELL**. That is why I think you are on target. There has to be maximum total community involvement.

My last question is: You say according to your chart that the rural black population in rural areas is low, therefore the black participation is low. Are you saying that because the black population is high in the urban areas you would expect minority participation to be high in those areas in terms of ownership, programing, and so forth?

Mr. **WHEELER**. I would expect that particularly in the area of employment it would be substantially higher but also in the other areas it would be higher; yes, sir.

Mr. MITCHELL. Yet we have seen the picture unfold to date where most of the cities that have been wired you don't have minority ownership.

Mr. WHEELER. I think it is important to recognize—don't forget, we are still in a situation where we are wiring most of the major markets. I ticked off in my testimony five examples of five major markets. We can go on and start picking out some of the ones, for instance, that you identified in your press release. Washington, D.C., St. Louis, Los Angeles, Detroit, other major markets that are in the process of being franchised where there is substantial minority participation. They don't know if they will get the franchise, but, as you know, there is a huge struggle in Los Angeles. There is a struggle within the community as to who will get the franchise.

I think that that kind of a process is going to insure full community participation as we just talked about.

Mr. MITCHELL. I have a number of other questions, but I will defer them for now and maybe if we don't get another chance—how soon do you have to leave?

Mr. WHEELER. I will be here for the next couple of witnesses, probably. I will be happy to answer any questions you would submit.

Mr. MITCHELL. We will submit them to you in writing also.

I will take one more shot at your thinking on multiple franchises. This is minority counsel. None of the minority members are present. However, I guess it is all right for you to raise questions on behalf of them.

Mr. BLACKISTONE. We received testimony from a number of witnesses indicating there are two major obstacles to franchising for small and minority business. One is lack of access to capital and the other is lack of technical expertise. Do you agree that both of these are significant problems and, if so, which do you consider to be more severe?

Mr. WHEELER. I think anybody who wants to get into cable is confronted with those two problems from day one. Probably the most significant thing now is having to build a system that will work on 22-percent money. It is fascinating, but we had several hundred operators in town recently and they wanted to talk about basic cable issues but they also wanted to talk about interest rates.

Mr. BLACKISTONE. Is that strictly a function of interest rates or is it a matter also of access to the money? Is the money there, if they are willing to pay the price?

Mr. WHEELER. I think that is the proper characterization, but the price is an arm and a leg now. As you have seen across the river in Alexandria, they are having difficult times with the price of money. The same situation in Arlington.

It is very difficult when you build an economic forecast based on 12, or in your wildest dreams 15-percent money, and then it becomes 20 or 22 percent and suddenly all the things you predicted don't come about.

Mr. BLACKISTONE. Finally, is there a shortage of technical skills, people who are experts at sophisticated kinds of things that have to be done to build a franchise?

Mr. WHEELER. Yes. I think that is endemic of our entire country. Someone told me the other day that last year in this country we graduated 17,000 electrical engineers. And last year Japan, with half the population of the United States, graduated 19,000 electrical engineers. This person went on to ask, is it any wonder why the Japanese are beating our pants off electronically.

It is an across-the-board problem we face.

Mr. MITCHELL. Thank you again, Mr. Wheeler.

Our next witness is Mr. Stephen R. Effros, the executive director of the Community Antenna Television Association.

Thank you for being here with us this morning. Unfortunately, I just received a copy of your testimony.

TESTIMONY OF STEPHEN R. EFFROS, EXECUTIVE DIRECTOR, COMMUNITY ANTENNA TELEVISION ASSOCIATION

Mr. EFFROS. Mr. Chairman, members of the committee, thank you for this opportunity to appear before you today.

I am Steve Effros, executive director of the Community Antenna Television Association better known as CATA.

CATA represents the independent, owner-operated cable television systems throughout the United States. The over 650 cable television systems represented by the Community Antenna Television Association are primarily the smaller, nonurban market operators, the folks who not only started this business, but still represent better than 50 percent of the cable television industry today.

Let me expand on that last point for a moment. While we have all heard a great deal about the so-called bells and whistles in the major city cable franchise fights, that is not what cable television really is today.

To be sure, the hot action and the publicity is all focused on the big operations, the big cities, and the big systems. However, you should all remember that over 50 percent of the cable industry today is comprised of systems serving 5,000 subscribers per system or less. In other words, this is still an industry made up of small operations running their own small businesses.

Naturally that is the focus of this subcommittee. Unfortunately, from your perspective and apparently from the perspective of Wall Street and most of the country's mayors and councilmen, that other cable television, the one with interactive, two-way institutional loops and fully addressable, pay per view programing is the focus of those who now think they want to get into this industry.

I am here to suggest another point of view. It is necessary, I believe, for someone inside the cable television industry to openly acknowledge to those of you on the outside looking in that we have not as yet figured out, in fact we don't really have the foggiest idea of how those big city bells and whistles systems are going to be paid for.

This industry, or at least the major market segment of it, may be a classic case of technology and expectation far outstripping economic sensibility. These systems are being built because we do have the bells and whistles and the governmental officials we are dealing with in the franchising process do believe we are in a so-called communications revolution. They in fact not only have the expectation of being a part of that revolution, they are mandating it. It is turning out to be a very expensive expectation.

Again, I have a different point of view. We are not experiencing a communications revolution. Rather, it is an evolution. What is revolting, however, is the misunderstanding, the rampant demands and promises, and the overall hype on all sides that is accompanying that evolution.

Unfortunately, this problem is not new in the communications business. When I worked at the FCC during the formative years of cable regulations in that Agency, my boss in the Cable Television Bureau once gave a speech in which he suggested, with a very fine-honed sense of humor, that UHF television was actually "a plot to bankrupt Jewish dentists."

Of course his point, made jocularly, was clear. After the first wave of success in the broadcast industry a new technology came along: UHF. The proponents of ultra high frequency television sold it to the unsuspecting as the natural inheritor of the success already shown in VHF broadcasting. It didn't happen. A lot of small businessmen found out the hard way.

I suggest to you that the lesson of UHF has apparently not been learned. The success of CATV, or community antenna television systems and the subsequent success of cable television systems does not automatically guarantee the success of broadband communications systems.

Make no mistake about it, in the large cities what we are talking about is not CATV, not cable, but broadband communications. And, unlike CATV or even cable, there are many new competitors in the field of broadband communications. It is not, I suspect, a field for the small businessman or woman.

So what happens to small business and cable? Well, in the smaller communities it will still thrive, so long as we can educate those small communities regarding the facts of life between expectations and reality. That is a project CATV embarked upon some time ago. It is not easy with all the media hype about cable these days.

In the large markets the only hope for local groups and minorities, in terms of ownership, is the joint-venture route. Some sort of participation with larger partners. You have already heard testimony regarding various ways that can be promoted.

Finally, there is a whole new field: Software for cable. That, too, is an area increasingly dominated by large companies. But those companies have no guaranteed lock on creativity, and that is where small business can thrive.

I trust that I have thrown out enough initial commentary to at least get the discussion started, so I will end my prepared statement. Thank you again for inviting CATV to testify, and I look forward to your questions.

Mr. MITCHELL. Indeed, you did throw out enough to get me started. You are in agreement, particularly in the urban areas which the big boys are trying to dominate—those that have the money—and they will do well.

Mr. EFFROS. I am not going to say they will do well. I question if they will do well. I think we are in a serious situation in cable television. I think that in this case technology may have outstripped reality, economic reality.

What we can do does not necessarily presage what we should do in terms of economics.

Mr. Mitchell. One of my constant concerns is the fact that you have a motion picture studio, some kind of a program production firm holding hands with a big system. Then that relationship is expanded to include somebody else. Maybe even it is possible for a newspaper to own a part of cable.

Mr. Effros. Yes, it is.

Mr. Mitchell. One of the ways, it seems to me, of breaking this up or at least fighting it ought to be some sort of limitation. I assume that limitation would have to be imposed by the FCC. What are your thoughts about a limitation on that interlocking ownership?

Despite the current crossownership limitations imposed by the FCC, let's make it the worst case scenario: Owns a newspaper, owns a local TV station; a radio broadcast station; and wants to own cable.

Mr. Effros. The way you phrased your question leads to two different questions, so if I might, I will separate them out. One has to do with media interests and control. The other has to do with multiple ownership size and vertical integration control or horizontal integration.

In terms of media ownership, I don't see that there is any necessary legislation that would assist the theoretical first amendment problems that are dictated by a media control question such as the one you raised.

The reason for that is that there is another question raised as to what the structure of the cable industry itself is. In other words, so long as there is some reasonable access to the cable industry to the cable channels by the public, then I don't see that there is any logical mission to saying that since cable is a type of media and newspaper is a type of media and radio and television station is a type of media, we should ban the cross-ownership type of those media.

The other side of that question, however, is size. Let's say the largest radio station and television station combine in town which is owned by a very large media conglomerate then goes after the cable system in that area or in any other area.

How big do you allow that to get before you say it is time to let others into the media per se, any portion of the media?

I think it is a serious question. The Community Antenna Television Association has not taken a formal position on either favoring or not favoring size limitations for cable television systems or cable television ownership.

Certainly, what we are seeing now is the largest companies are—we have a small fish, bigger fish, biggest fish situation in cable with this. Small cable operators are being swallowed up by the larger one which in turn are being swallowed up by the largest.

Again we have a media question. Do you want very, very large companies ultimately controling your entire cable television media in the United States?

If you just limit the question to cable television, you will get one answer from me personally and I would say no because right now in cable television the media, as compared to other media, is very small.

In other words, if you say the largest company in cable television has 1½ million subscribers, that is meaningless if you compare it to compete against the A. T. & T., for instance, but if you restrict it to just looking at the cable industry, then it might be a question worth investigation by the FCC; yes.

I don't know frankly whether it would help minority ownership even if you did that, or small business ownership, because in the larger communities, regardless of who owns the system, the capital expense is so high, the expectations are so outrageous I think at this point that whoever gains control of the system in the community is going to be looking for a very deep economic pocket.

Mr. **Mitchell.** I understand what you are saying, but certainly a joint venture approach would not hurt.

Mr. **Effros.** No, sir. It wouldn't. But if you are going to go the joint venture approach, then it doesn't matter how big your other partner is. As a matter of fact, you might want the biggest partner you can find because it is extremely expensive.

Cable is not a sure thing in the big cities. To be sure, many of my members in the smaller communities that are running cable systems and have been running them for 10 or 15 years have been very successful. They are being offered amounts of money right now to buy out their systems which quite frankly even shock the cable operators. That is primarily due to new businessmen coming into the field wanting to buy into the cable industry and not having a very good appreciation of what the cable subscriber might or might not be worth in a smaller community, but in the larger community we don't have any history of great success. We are just starting to build these cities now.

Mr. **Mitchell.** In your smaller community has that sellout begun?

Mr. **Effros.** Yes. The process has started for several reasons. The first one is that new players are getting into the field, for instance, some telephone companies, outside of their own service areas, have decided to take their excess capital and buy cable systems. They are making monetary offers—it is the type of offer you just can't refuse—the monetary offers were in the high end I suspect, the peak of the monetary offers in cable television systems in the smaller markets.

One reason is because of the interest of new companies getting into the business. A second reason, and one that I think the Federal Government has an obligation at this point to look at, is the smaller operator is being forced to sell his system prior to the refranchise process beginning.

Most cable franchises are between 15 and 25 years long. Since 1972 when the FCC——

Mr. **Mitchell.** Excuse me. When you say forced, is that because of the lucrative offers?

Mr. **Effros.** No; I will explain in a minute.

Since the franchise period for the older systems, the more established cable television systems is now starting to be over—in other words, they are about to be refranchised, we have a situation wherein the smaller community—remember, 50 percent of all cable systems are 5,000 subscribers or less. I am talking about those communities.

The community has seen the newspapers, the community has seen the magazines. It has seen the Newsweek article and everybody else's article about cable television. Not many have been terribly accurate, but they have seen them. They have seen the franchise fights going on in for instance Denver where there are very big systems being offered with inter-active two-way and with very low subscriber rates, the intention being get everybody hooked up and then we can sell them on the service. So they are citing the futuristic service of cable. They are seeing broadband communications. And the localities are saying we want that, too.

But the small operator has the very simple problem he can't go to his partner with the deep pocket and say "Give me all the money to build this system," he has to go to the banker and the banker asks him a simple question. He says, "Sure you have been a successful business up until now. You have a 12- or 24-channel system and now the city is going to demand 54 channels. I want to see on paper what the incremental increase in our income will be to cover the cost of the loan that I am going to make you to build that 54-channel system."

The cable operator can't show it to him. It does not exist yet. So here we have the cable operator who has been doing a good job in the city for years, he comes up to renewal time, the expectations have far outstripped the economics, and he is asked to build a system that he can't afford to build. So he is in a position 2, 3, or 4 years prior to franchise renewal of looking around and saying, "I better sell out while the selling is good, because the next couple of years I am going to be asked to build a system that I cannot justify to my banker in building."

So that is the second reason that the cable operators, the smaller operators, are being forced out of the marketplace.

It is not an easy problem.

Mr. MITCHELL. So many problems. I guess we undertook these hearings to try to determine how this committee could be of assistance to local small and minority businesses in cable. What we have run into up to this point is always the argument that so much of this is under local control that perhaps you cannot be very useful, Brother Mitchell, in these hearings.

Have you had experience with the FCC?

Mr. EFFROS. Yes, sir.

Mr. MITCHELL. Do you have any ideas about Federal legislation which might be brought to bear to try to resolve some of the enormous difficulties of blacks, Hispanics, other minorities and small businesses in trying to get a piece of the action?

Mr. EFFROS. There are several. As I have tried to outline in my testimony, the biggest problem we have today is overexpectation. That relates to the refranchising process. That overexpectation in turn leads to all of the financial problems that we talked about, the problems for the minority business getting a loan, and so on.

You heard testimony a few weeks ago about making it easier for joint ventures to exist from a tax point of view. I think those suggestions were valid. That is No. 1.

No. 2, I think it is extremely important that the Federal Government get back into, at least, the function of education in terms of the cities and States on what cable television really is and is not.

I am afraid——

Mr. MITCHELL. The FCC?

Mr. **Effros**. The FCC or Congress itself. I would say that the FCC would be a logical place to start. When the cable rules were written in 1972 I was responsible for the area of franchising. Nobody really expected those rules to last forever. They were not intended to be a long-term effort by the FCC to control the cities and States. What they were intended to do was be an education, to say to everybody—Stop a moment. Let's require public hearings. Let's require you to look at questions like line extension, all the mundane things that go on in cable television franchising.

Because up until that point what had happened was the franchise process had become a bidding war and when the FCC intervened in 1972 and said let's stop the bidding war and look at the impact of communications on your community, a set of rules was created to do that.

By 1976, 1977, those rules were pretty much ameliorated. They had been taken away. Some of them by the FCC, others by court action.

By 1980 we are right back at the situation of bidding contests. We are right back where we started from in 1971 because we are back at the severe bidding wars, the over-expectations, the cable operators saying rightfully—I have no choice. I must bid this because my competitor is going to bid and if I don't bid it and don't get the franchise it is well and good for me to be a good guy and educate the communities, but my business will go down the drain—so I think education is an extremely important aspect of what the Government can do.

Mr. **Mitchell**. Could I interrupt you for just a moment on that point?

I agree with you, but I find it difficult to see the Congress fulfilling that role except through this kind of oversight hearing.

Mr. **Effros**. But this kind of hearing is very important, if we can get at another aspect of the debate that I think will be dealt with federally, and it deals not only with minority business but with all business in the communications field, particularly cable, and that is municipal ownership. That is a question that is going to come up more and more as Congress debates the other issues involved in cable television.

We have just gone through a very painful experience in the Senate with proposed cable amendments that I am sure you are aware of. Those amendments, whether they were good or bad, is not material. The reaction to them by the cities has been so strong that the cities were afraid they were going to lose their authority to regulate cable that one of the answers that has come out in terms of some cities is to look at municipal ownership, their logic being if we can regulate it we might as well own it, then we can control it.

So we are seeing a resurgence of the consideration of municipal ownership of cable television systems around the United States. That is something I think Congress can deal with. It cuts across the boards, minority ownership, small business ownership, large business ownership.

If the cities decide that this is for the first time a communications industry, that the Government is going to control, we have a whole new question for Congress to debate and that is whether—

my answer to it is clear—whether any governmental entity should be owning any communications industry.

I think there are serious first amendment questions involved.

In terms of other ownership options for Government regulations I think that the Government can rightfully look at such questions as franchise fee, restrictions which were part of the Senate bill. No longer a part of it, but they were part of it. They are presently part of the FCC rulings and I have to say to you, sir, that merely putting in a proposal for franchise fee restrictions would not be enough.

The Federal Communications Commission has a rule on franchise fee restrictions right now. It is totally ignored by the cities and it is totally ignored by the operators because there is no enforcement mechanism.

So simply having a proposal that says the FCC's franchise fee restrictions should be continued would not do us much good. I think that the Federal Government has a necessary role in the area of policy attachments and the entire question of not only extending the present policy attachment law but particularly looking at those areas where it does not apply.

Now, I will be totally frank. I know we have a heck of a political fight on our hands in the smaller communities around the country because we would be fighting the public utility district and the cooperatives, but I can show you time after time where the local cooperative refuses to give access to the local cable operator because he is not under any Governmental control.

So, yes, there are definitely lots of areas that the Federal Government, through the FCC, through ovesight hearings, can deal with. First one is education. There is another whole area and that would be software, but I don't think the Federal Government has any real jurisdictional control over the creative community in this country and I don't think it should.

I think it is an area for minorities definitely, and we have some sterling successes in that area already, but it is in the area where the Government should be involved.

Mr. MITCHELL. Mr. Effros, if I had to take the subcommittee out for field hearings on education with regard to cable in local communities, I sure would want to take you along with me. You have been an excellent witness, very excellent, and thank you for participating.

Our next witness is Gracie Nettingham, EEO assistant and consultant of the office of communications of the United Church of Christ in New York.

TESTIMONY OF GRACIE B. NETTINGHAM, EEO ASSISTANT AND CONSULTANT, OFFICE OF COMMUNICATION, UNITED CHURCH OF CHRIST

Ms. NETTINGHAM. I, Gracie B. Nettingham, am the founder of Minorities in Cable, Inc. I am presently employed as an EEO assistant and consultant for the field operation of the office of communication of the United Church of Christ in New York City.

At the time Minorities in Cable was formed, in the winter of 1980, I was employed by UA Columbia Cablevision of New Jersey as director of studio operations. My job was considered an upper management position.

As a charter member of Women in Cable, Inc., I actually saw the rapid growth and acceptance of this organization by the cable industry, but I did not feel that racial minority needs were being addressed. Minorities in Cable was formed. Its purposes are:

One, to aid in the recruitment, placement, and followup of minority employment in the cable industry.

Two, to assist the cable industry as a "resource pool" in all aspects of the total growth of the industry.

Three, to bring together minority individuals to ventilate and communicate ideas that are basic to minority concerns.

Four, to create an awareness of the possibilities of cablevision as a vehicle of creative expression.

Shortly after the brochures were passed out to the minorities at the company, in an effort to recruit members, and after attending a national conference as a representative of Minorities in Cable, I was fired by the general manager.

Minorities in Cable was mentioned in Essence, February 1981, and Black Enterprise, October 1981. The organization received many letters and phone calls. Most were inquiring about jobs in cable television. Due to a lack of funds to answer these letters, the office of communication of the United Church of Christ assumed the financial responsibility for the response.

During the 1970's, it was predicted that the 1980's would become the decade of the telecommunications explosion. The prediction is certainly coming true, and the telecommunications explosion is here. This fast expanding technology will have a great impact on our communities and our individual lives for many years to come.

Although it is readily accepted that radio and television are powerful forces in our lives, it is also recognized that yet another rapidly expanding communications technology, cable television, will have an even greater effect on us and our communities. This technology will control the flow of information and opinion of more people than does any other medium of communication.

The cable industry already serves as an important means of informing, educating, entertaining, and employing many people. Minorities need to participate totally in this powerful medium. The central issues in connection with minority involvement are ownership and employment.

Economic development will certainly be a real concern for minorities during the decade of the 1980's. As has been true for radio and television licensees, cable operators are likely to reap enormous profits from cable system control.

Blacks and other racial minorities should act now to find opportunities to win all or part of cable systems. Yet in order to seize the available opportunities, we must dispel and decipher the mysteries that surround cable television.

Minorities should be made aware of the total operation of this vast and diverse industry. This can be done by direct information dissemination to the minority community. Educational and training programs are needed to introduce potential applicants to jobs in the industry and to facilitate upward mobility once employment is gained. Minority participation, moreover, will be more effective if the industry is also involved in the education and training programs.

At present, more minorities need to be employed in the industry, especially on the management level where operational decisions are made. Although the operators of the cable systems are subject to the same FCC equal opportunity rules as radio and TV broadcasters, the FCC and the cable industry appear to have virtually ignored the EEO requirements.

The cable television employment statistics released by the FCC in July 1981, revealed that of 30,630 cable employees, only 3,928 were minorities, and that both minority male and female overall employment increased in 1980 by only "three-tenths of 1 percent." The FCC equal opportunity rules should be enforced. Without employment experience, the vision for entrepreneurship is often shortsighted.

Minorities need to be able to bid for the franchises—both new and old—and should be made aware of the many necessary support services that are often leased to small businesses by the cable operators, such as building the system, installation or hookup, equipment repair, sales subscription and advertising, and the production of programs, live and packaged. These areas not only offer small business opportunities but encourage more employment.

Not too long ago, the broadcast communication industry seemed inaccessible to most minorities, but there have been some positive changes. These resulted from court decisions, regulatory changes in reaction to citizen action and organizations formed to help minority entrepreneurs interested in the communications industry. This can happen also in the cable television industry.

Minorities need to know where to get financing, how to manage the business. Minorities need to be informed about the purpose of the Small Business Administration and its special programs for minority entrepreneurship.

In closing, let me leave this committee with four suggestions for congressional actions which would support the objectives of Minorities in Cable. First, funding should be made more accessible for entry into small businesses. Second, recruitment and training programs should be developed with full industry cooperation. Third, Federal guidelines seem necessary to insure that cable television will become more than an expanded version of commercial television programing, and finally, I urge this committee actively to discourage the removal of equal employment and affirmative action laws. Without official prodding, fair employment in the cable television industry may slip backward rather than improve.

Mr. MITCHELL. Thank you, Ms. Nettingham.

You were fired because of your recruitment effort? The general manager of the cable company, did he say, "Listen, you have been involved in recruitment and you are fired?"

Ms. NETTINGHAM. No. I was called in to explain something to the executive vice president of the corporation because the general manager stated that he could not explain it.

When I asked him could I bring the person who gave the report, he said, "Sure, because I am not an engineer, and this is technical business. I always take my main engineer with me when I go to technical meetings." About 30 minutes before going to the meeting, he stuck his head in the door and said, "Come alone; the executive vice president wants to talk with you alone."

When I went in, I explained the report. I had everything laid out. I assume they could not find anything wrong with the report. They then told me that I was a very creative person but that this was a business, and this was not a social work agency or school; they were not there to help people; they were there to make money, and that due to my creativity I should go some other place for a job.

I filed charges on speculation that it was Minorities in Cable because I knew that my records showed I'd done a good job, and I had it in writing. The case was settled without going to court.

Mr. MITCHELL. In your favor?

Ms. NETTINGHAM. Yes.

Mr. MITCHELL. You heard Mr. Wheeler's testimony this morning about the training program he is attempting to implement. Is that the sort of approach that you would recommend?

Ms. NETTINGHAM. Since I don't know about all the training programs he is talking about, those I do know about, I am pleased that they are there, but I do not feel that people should be sent halfway across this country to learn to climb the poles to install, because they have been installing for years, and have been doing it with 2 weeks of training on the job.

Now minorities have to be sent to, let's say, the Midwest, to learn to climb a pole. I think there should be more in-depth programs; I believe until we get minorities on the management level where decisions are made, entrepreneurships will be lessened.

Mr. MITCHELL. Based upon your knowledge of the cable industry, how many black persons or other minorities are system managers? Do you have any idea?

Ms. NETTINGHAM. They are very few. I've just finished interviewing 23 general managers, and upper management people from Chicago to New England and the New York area. Of the three areas, there was only one black general manager from the suburbs of Chicago.

The statistics were very feeble. New York City has had cable since the late 1960's, and its employment record—and you know how many minorities are in New York—still the statistics are very feeble. They turn in a 395-A, which is for public viewing, and it does not speak well for the cable industry.

Mr. MITCHELL. Let me deal with your recommendations. You say first funding should be made more accessible for small businesses entering into cable?

Ms. NETTINGHAM. Yes.

Mr. MITCHELL. Where would that funding come from? The Federal Government?

Ms. NETTINGHAM. Well, I think that minorities don't know where to go. We don't know where to start. If there is funding from the Federal Government, since I don't know whether that is accepted, you know, into private business, we certainly should know that the Federal Government has it, or if they don't, we should know where to go; and in my own head, there should be either legislation, or the Small Business Administration should let us know more about that. I suspect many of us could also run cable systems, or at least do the ancillary support services. We don't know how to get started because the dollar takes the first picture in our mind. We can't do it because we don't have the money.

Mr. MITCHELL. As you probably know, the budget for the Small Business Administration has been designed in terms of the budget cuts that have been proposed. Given what I think is the mood of the Congress, I believe that it is most unlikely there would be any supplemental appropriation to help out in this area, also, even if there were supplemental appropriations, which I think is unlikely. We have heard so much testimony about the high-risk nature of this business that I am certain the Government or Congress would be relatively reluctant to move in that direction. I am looking at the worst case.

Assuming that there is Federal funding to facilitate the entry of small and minority business into cable, which is not a really feasible approach at this time, do you have any other thoughts about possible sources of funding? Would foundations do this?

Ms. NETTINGHAM. I would think so. I would think that foundations could help. It would certainly carry through their goals. I even see the cable industry helping out because I think there is a lot of money with established operators. I know there is lots of money being made by established cable operators.

Mr. MITCHELL. Would they want to fund a potential competitor?

Ms. NETTINGHAM. I am thinking now of small businesses that would feed them, most of the support services are leased out, so if the system is being served by, for instance, in my own home town, there is an ad that runs all the time: If you have a white van come to us and we will pay you $450 a week or $350, or whatever, for this installation. Now, my feeling is there is a whole business there, that if one knew they could rent, buy, or whatever, many white vans or start off with two. There is a business there that the cable industry, knowing that they could get their money back through loans, or however, might just do that.

I think the cable industry is open for anything that has growth potential. I don't think the cable industry knows. I think it is so new for everybody and the growth is so rapid there are growing pains for everybody—that it is possible that the industry might support small businesses.

Mr. MITCHELL. One last question: You have stated several times that there just is not enough information being gotten out to minorities and small businesses about cable. There is a Minority Enterprise Division in the Federal Communications Commission. As I understood it, it was set up to disseminate information to minorities about cable opportunities among other opportunities. Have you been in contact with that division?

Ms. NETTINGHAM. Through my job, I know about these things, but as a citizen and certainly as an employee with the cable industry, I did not know that. I am a chairperson of the cable committee in my town and the only information the people in the town get is from the committee.

Mr. MITCHELL. You are aware of this Minority Enterprise Division which is to provide information. Were they helpful in providing information to you?

Ms. NETTINGHAM. Do you mean the FCC?

Mr. **Mitchell.** Yes.

Ms. **Nettingham.** Oh, yes.

Mr. **Mitchell.** Counsel?

Mr. **Blackistone.** There is another witness who will appear after you, who will testify there are few minorities that have had the opportunity to obtain the training and skills necessary to move into the higher levels of the industry. First, do you agree with this, and, second, do you see this as one of the major stumbling blocks, this lack of opportunity to obtain training and education?

Ms. **Nettingham.** I agree with it 100 percent. I do not feel that minorities that are hired, unless they come in on the upper level, are being trained when those do get the opportunity to move forward.

Mr. **Blackistone.** So you don't feel they are being given the training opportunities?

Ms. **Nettingham.** Exactly.

Mr. **Blackistone.** Thank you.

Mr. **Mitchell.** I have my own personal thoughts about training opportunities. I guess some of my bias shows through: It is an experiencial bias.

When I first ran for Congress, there was some difficulty with some of my constituents. They said he didn't have the experience to be a Congressman. It didn't take me long to do that.

I look across-the-board at everything I have participated in, in my life. I am not different than the normal person. I am not sure there is an enormous amount of training that needs to be given. I am reasonably sure if you throw me into that situation, I can learn it very quickly.

This is not to suggest we don't need some training, but I am always a little concerned about the overemphasis on that. Generally that has been the response for most of the employers when we come in to look for a job: You have neither the training nor the experience.

Well, we don't. How are we going to get it unless we are hired? There is some reservation about too much stress on that.

Ms. **Nettingham.** I agree with you. My experience has been that all the upper management people that I have interviewed have said they had no training; they didn't know anything about cable. So I felt training was the next best step, but for me it would be employment. Employ me and then I would have on-hand experience.

Mr. **Mitchell.** Fine. Thank you very much.

We have two more witnesses scheduled.

TESTIMONY OF HARRY C. HART, VICE PRESIDENT, NATIONWIDE UNDERGROUND CABLE SYSTEMS, INC.

Mr. **Hart.** Mr. Chairman and members of the subcommittee, my name is Harry C. Hart. I am vice president, Nationwide Underground Cable Systems, Inc., of New Jersey.

I am pleased to have this opportunity to present the minority vendor's point of view to this committee. I realize that I do not speak for all small and minority businesses providing a service or product to the cable industry, but I believe some of my experiences are representative.

My partner, Ronald L. Wilson, and I started Nationwide Underground Cable Systems, Inc., 2½ years ago, with approximately $8,000. We parlayed our experience as supervisors of underground cable installation for a Ohio-based company into our own company. While in the Marine Corps, I was also trained in electrical communications. In the 2 years since the founding of our company, we have laid over 100 miles of cable per year in many types of terrain.

We are experts at underground cable construction, which places us in a unique position in the industry. While underground construction is a more expensive undertaking, it is overtaking aerial construction as more communities adopt ordinances that require utilities to install cable underground.

We pride ourselves on the quality workmanship we provide our clients. Poor reception of the cable signal can easily result from crimped cable which is susceptible to crimping both during and after installation. In the years since we have been in business, we have never had to repeat any work due to poor reception from badly laid cable.

Most of our work has been in our company-based State of New Jersey. Right now, we are working on a major contract for New York Times Cable TV. However, we are looking to expand our company outside the State, and we are taking steps to enter other major urban markets.

My testimony will basically support testimony you have heard from other witnesses. We have proven in a highly competitive marketplace that we can provide a high quality service. But in order to expand into the kind of company that would put us in the big league, we need and require capital.

To illustrate the point, we would like to become a "turnkey" operation. This means that we would have a full service capability to offer potential clients, that is, home installations, system design, aerial construction, and head-in equipment. We estimate that it would require approximately $50,000 just to add the capacity of aerial construction alone.

Another experience that illustrates the point indirectly touches on the issue of cross ownership. The trend in the telecommunications industry toward deregulation will not happen without some fallout for small and minority businesses.

One of our major competitors in New Jersey is owned by a cable operator. This puts me at a competitive disadvantage because the company can be subsidized by the parent company and can win contracts by cutting their margins closer than I can afford without risking loss.

Unregulated cross ownership can have a chilling effect on small and minority business development. I have recently won some work away from this competitor by providing a better service, but this cannot always be counted on to work.

I also must aline myself on the side of multiple franchises. The reasoning is simple: The more franchises awarded increases my chances to be hired by the cable operator.

This issue has some economic implications for me as well. With a staff of approximately 22 people, we are still a relatively small crew. Our ability to meet production schedules is better served by working on small franchises than large franchises with many miles of cabling to be accomplished.

Finally, on the issue of multiple franchising, interconnecting multiple franchises is not a technical impossibility. In northern New Jersey, an experiment is underway to connect separate franchises via microwave relay of the signal when it is desirable to get wider coverage of a particular broadcast.

I would like to add that I am distressed by the cutbacks in Comprehensive Employment and Training Act—CETA—funding and the moratorium on accepting and processing 8(a) applications. Because of CETA, I was able to train workers for my work crew. Part of the reason for the absence of minority businesses in this industry is that there are so few minorities with skills in this industry. I believe that 8(a) certification would improve my opportunity to obtain Government contracts. I regret that this program is not presently available to me.

I would like to offer the following proposals for this committee's consideration:

First, that all qualified minority cable contractors be considered foremost for cable construction jobs where Government funding is involved.

Second, that RFP's include minority participation in the development of a system.

Third, that the EEO Division of the FCC set up a special taskforce to enlist the aid of minority cable contractors for the instruction of minorities in cable construction techniques.

In addition to these specific proposals, I agree with previous speakers that ways must be found to stimulate investment in minority-owned businesses servicing the cable industry.

I appreciate this opportunity to make these views known to this committee, and I applaud your efforts, Congressman Mitchell, for holding these hearings.

Mr. MITCHELL. Thank you. It is good to hear a success story. You have been in business 2½ years, and you have hung in there, and your business is going fairly well, as I understand, employing 30-some people?

Mr. HART. Twenty-two people.

Mr. MITCHELL. The CETA workers that you had available to you, how many of them were ultimately hired by you?

Mr. HART. We kept on two of the CETA workers.

Mr. MITCHELL. You suggest that you would like to go into the big leagues. Certainly you seem aggressive and, having run your company for 2½ years, starting with almost nothing, you should move into the big leagues. You need money to do that. Who have you approached for money?

Mr. HART. We have gone to the commercial market. Not for larger sums of money, because it is not within our timeframe right now to expand into these other areas, but we have gone to the financial industry for small loans where we had very little trouble.

Mr. MITCHELL. When you say a small loan, what size?

Mr. HART. In the $10,000 to $15,000 area.

Mr. **Mitchell.** In your testimony you say, "We estimate that it would require approximately $50,000 just to add the capacity for aerial construction alone."

Mr. **Hart.** Yes.

Mr. **Mitchell.** Based on your contacts with the commercial market, do you think that kind of money would be made available to you?

Mr. **Hart.** As I say, I haven't approached them in that manner as of yet, but I don't see an obstacle, or I shouldn't see an obstacle if I were to approach them. I feel if there were an obstacle, there should be one good reason why.

Mr. **Mitchell.** When do you plan to broaden your operation, in what kind of timetable?

Mr. **Hart.** Within the next 2 or 3 years.

Mr. **Mitchell.** Then you face no immediate crisis right now?

Mr. **Hart.** Not with regard to financing; no.

Mr. **Mitchell.** When did you apply for your 8(a) certification?

Mr. **Hart.** At the time I was made aware of the 8(a) program was about the time there was a moratorium on it, and I was told by persons at the Small Business Administration there was a moratorium and they were not accepting applications. This was approximately the end of 1979 or the beginning of 1980, or the end of 1980; somewhere in there.

Mr. **Mitchell.** Apparently you have done a good job in selling your company and because of the good work done by your company.

Has the cable industry, itself, given you any marketing assistance?

Mr. **Hart.** No; not marketing assistance.

Mr. **Mitchell.** Any kind of assistance at all?

Mr. **Hart.** It is pretty much going for the contracts on your own and working them on your own. With regard to assistance from the industry, other than contacts I have made possibly through FCC's division, that is about the extent of the help that I have had.

It is a more or less independent attitude insofar as approaching any type of agency we really felt could help us. When we went to push ourselves out there initially and to find out what obstacles we would run into and be able to overcome, and when we felt need for help from a Federal agency or some other agency, we called on them.

Mr. **Mitchell.** You say it will be 2 to 2½ years before you plan to broaden your operation?

Mr. **Hart.** Yes.

Mr. **Mitchell.** At the rate at which the cable industry is going, do you have any concerns that you might be frozen out if you delay for another 2½ years?

Mr. **Hart.** Well, with past experience right now, it has kind of hindered us from moving our timetable any faster. We have been in a situation where we have been kind of under the gun as far as obtaining the work is concerned, in order to build our capital. We are more or less struggling right now in a situation where we are just now getting back into the market and being able to start building.

If I might add, cross-ownership has been one of our largest obstacles in our path, because we were in a situation where we had the contract in hand and another larger contractor with no experience moved in, but they had the capital backing, and they moved in and kind of squeezed us out of the market. Since it was inside the cable company, which is not inside the cable company but it was common knowledge they had inside to the construction coordinator who was, in turn, distributing the work between us and the other contractor; so, therefore, that left us the small side of the work.

Mr. **Mitchell.** Do you feel that the FCC, or the Congress, or some other entity really should move to limit what you call cross-ownership or vertical integration; that it should be limited in some way?

Mr. **Hart.** Yes, sir, I agree 100 percent.

Mr. **Mitchell.** Could you see the FCC doing that?

Mr. **Hart.** I have seen nothing.

Mr. **Mitchell.** No, but would that be the logical vehicle in your mind to promulgate some regulations to govern that situation?

Mr. **Hart.** Yes; one problem that they may have in the process is determining who does have cross-ownership, because most of the time it is not an open and common fact that someone has cross-ownership with the cable company and the contractor.

Mr. **Mitchell.** Minority counsel?

Mr. **Blackistone.** In your experience have you found that the industry is becoming so technologically sophisticated and the technology so expensive that it is difficult for a new firm such as yours to break in? For instance, is the equipment that you must purchase expensive, and would that be the case for others?

Mr. **Hart.** I believe the underground is the most expensive because of the machinery. The breaking into the industry is really limited because of lack of knowledge by the common contractor who might be involved in another industry at the time.

As far as knowing bidding, bidding prices, because it is pretty much closed, and it is a "behind-the-doors" type of thing, until you are really into the industry, there is no way of knowing how you should approach these cable operators or how you should proceed with your bidding; and that kind of limits you.

Mr. **Blackistone.** So there is not the open competition traditionally associated with the construction industry?

Mr. **Hart.** Not unless there are some agencies or informational sources that I don't know about which provide these kinds of facts to a potential contract.

Mr. **Blackistone.** With respect to the 8(a) program, are there Government contracts or Government needs for the type of underground cable construction which you perform?

Mr. **Hart.** Yes; I believe there are military bases which hire outside contractors to build underground systems on the base.

Mr. **Blackistone.** Thank you.

Mr. **Mitchell.** Counsel and I were discussing a problem, and we don't know the answer.

You have managed an awfully difficult situation in which your competitor was subsidized, really, by revenues from another company and he could outbid you. We were trying to figure out, where do you go to complain about this? Did you try to lodge a complaint with someone?

Mr. HART. Yes, in the winter of 1979 at an FCC conference here in Washington, we brought in, jointly with another contractor out of the Midwest, brought in proposals on what we felt might be a possible solution to the problem—with no results.

Mr. MITCHELL. But in this case you said to FCC, "This is what they have done to me, and what can you do about it?"

Mr. HART. We didn't state that actual instance, simply because we do not have facts providing other than the principals in my competitor's company, to know for sure that is a cross-ownership situation.

Mr. MITCHELL. Do you recall what the proposal was you made to FCC to prevent this situation?

Mr. HART. More regulation and more enforcement of regulation by FCC and more involvement from the EEO Division of FCC.

Mr. MITCHELL. Do you have a copy of those recommendations that you can send to me?

Mr. HART. Yes.

Mr. MITCHELL. I would appreciate taking a look at them.

[The proposal referred to above follows:]

PETITION FOR MINORITY CABLE CONTRACTORS

for the consideration of the:

FEDERAL COMMUNICATIONS COMMISSION

COMPLIANCE DIVISION/EEO TASK FORCE

POLICY REVIEW and DEVELOPMENT DIVISION

"Notice of PROPOSED RULEMAKING"

Proposed rules for the benefit of minority cable contractors to be included, established, and enforced through the FCC's Compliance Division, EEO Task force; in behalf of independent minority cable contractors to assist in educational training with the objective for the development of a minority construction economic base to affect changes in today's cable television structure which eliminates minority cable contractors from the mainstream of the American economy.

PETITION FOR MINORITY CABLE CONTRACTORS

These proposals are the sole perception of:

CREATIVE CABLE DEVELOPERS/ Columbus, Ohio / owner: Richard Rodgers

NATIONWIDE UNDERGROUND CABLE SYSTEMS, INC. / Clementon, New Jersey / owners; Harry Hart and Ronald Wilson

PROPOSAL I

That as part of EEO hiring standards all subcontracted work through cable systems should include reviewed bids from minority contractors (manufacturers, suppliers etc. where applicable) and upon acceptance of professional services there should be no less a monetary compensation or active periods of perfunctory labor; with equal distribution of work to be performed between white and minority owned businesses, to alleviate disproportionate labor standards.

PROPOSAL II

That the FCC and NCTA work in conjoined efforts to draft a list of minority cable contractors to submitted to all existing MSO's and all newly acquired franchised cable systems for the benefit of both cable operators and cable contractors so that they might be in direct contact with one another.

PROPOSAL III

That all qualified minority cable contractors be considered foremost for cable construction jobs where government funding mandates minority labor participation.

PROPOSAL IV

That the EEO Division of the FCC set up a special task force to enlist the aid of minority cable contractors for the construction of minorities in cable construction techniques to insure the future economic stature of minority cable contractors from being overlooked.

PROPOSAL V

That an affirmative action program be initiated through the EEO Division of the FCC for compliance standards within the cable industry to include minority owned businesses who can provide services to afford them (minority businesses) fair competition and discrimination protection.

PROPOSAL VI

That the FCC promote dialogue between their EEO Division and cable organizations to include EEO programs for minority cable contractors within the respective organizations for the promulgation of unified minority participation.

PROPOSAL VII

That RFP's (requests for proposals) must include minority participation in the development of a system. And/or city franchise selection should acknowledge those franchises which propose system building through the procurement of minority cable contractors.

PROPOSAL VIII

That the EEO committee sponsored through the NCTA, headed by William Johnson, president of KBLE of Columbus, Ohio, add an inclusive task force branch for the development and training of employment opportunities with respect to

PROPOSAL VIII continued:

minority cable contractors. The objective provided through this proposal would create a separate task force devoted to involve and acquaint minorities with the technology of cable construction.

IN AN EFFORT TO INTRODUCE THE FCC AND NCTA WITH THE PROBLEMS FACED BY MINORITY CABLE CONTRACTORS WE RESPECTFULLY SUBMIT THESE PROPOSALS FOR THE CONSIDERATION OF THE FCC TO ADOPT ALL OR PART OF HEREIN.

Mr. Mitchell. Thank you very much for your very informative testimony. Keep up the good work. You will be big league: I can tell.

Mr. Hart. Thank you for the opportunity to testify.

Mr. Mitchell. Unfortunately, our last scheduled witness is delayed, and I certainly don't want to delay the hearings. It has no reference to the PATCO situation, though his plane is delayed. We will accept his testimony for the record.

[Mr. Mercure's prepared statement follows:]

Prepared Statement of Alex P. Mercure on Behalf of Mercure Telecommunications, Inc., Association for Entrepreneurs in Telecommunications

I am pleased to submit testimony on this vital subject on behalf of my company and AETEC. The overall point of my message is that minority business development in the cable industry is possible, and it is not yet too late, if certain actions are taken to create the best possible environment for minority involvement.

Prior to March of this year, the majority of my experience had been as a public servant. My career as a public servant was capped as the Undersecretary of Agriculture with responsibility for rural development through the Farmers Home Administration and the Rural Electrification Administration (REA). Needless to say, this job prepared me well for my role as President and Chief Executive Officer of Mercure Telecommunications, Inc. However, I want to stress the point that the financial community is no more enamored of me because of my past experience than of any other minority businessman trying to compete in a high stakes industry.

Before I founded MTI, I started with several other partners a small cable franchise in the Southwest in 1975. With the help of $250,000 equity financing from the Control Data Corporation MESBIC and $446,000 from partners, MTI was started. We now own nine small franchises in the southeast and west. One of the franchises is a military base in Florida. These franchises are growing; for example, the military base which now has 2,000 potential subscribers will increase by another 400 mobile homes this month.

I would describe the market for these small systems (fewer than 50,000 subscribers) as substantial. According to the National Cable Television Association, there are 4,360 cable systems currently operating in 10,000 communities. Building plants for these systems are not phenomenally costly, in fact, a small system can be wired for no more than $700,000. It is these smaller systems which hold potential for minority businessmen. However, with appropriate and adequate capital, minority businessmen do not have to be limited to small franchises.

The minority entrepreneur has several strikes against him or her in this industry. You heard in previous testimony before this committee on September 23, that this industry has its roots in rural, white communities which had poor television reception in remote areas. This has been a deterrent to minority enterprise and has put the minority entrepreneur in the position of being a newcomer to the industry. Newcomers to our industry will be regarded with suspicion and skepticism. Our capability is constantly being questioned as is our knowledge of the industry. This point is supported by the testimony of witnesses appearing before the committee in September. It was pointed out several times that minority entrepreneurs lacked the expertise to put together winning proposals.

I have another point of view to offer for this committee's consideration. Separation from the normal channels of financing is the minority entrepreneur's major problem. My situation is a case in point. In order to grow my company, I need to have access to financing. With this additional financing, I could add plant onto one of my existing franchises, thereby increasing my potential for revenue. Management and technical skills are not the limitations for minority businessmen.

The financial community has little faith that minority businessmen will succeed in the cable industry. Without this confidence, minority cable operators or providers lack the muscle to be cooperative. Joint ventures and partnerships with major MSO's are not the answer if ownership and control are our goal.

Other barriers to minority involvement in cable are also based on economics. Multiple franchising has many facets, but the only one that favors minority enterprise is multisystems within a system as opposed to one franchise award. A piece of a system is within the reach of a small system operator where a large franchise would not be. I do not support the MSO's view that system integrity is jeopardized when the system is split up. Requests for proposals can be written to stipulate that separate systems be capable of interconnecting. The technology will support this.

While I favor jurisdictional regulation of the franchise fee, I believe that small system operators would be the victims of jurisdictional rate regulation. It behooves both the cable operator and the jurisdiction to collaborate to offer attractive rate structures. The greed of either partner could drive subscribers away.

Another more virulent trend to minority enterprise in cable is the condition that the cable operator pay a non-refundable fee to bid on the RFP. In Montgomery County, Md., respondents to the RFP are required to pay $50,000 if they bid on part of the franchise and $100,000 to bid on the whole franchise. For each of my systems, approximately $60,000 is spent before the cable is laid. Bearing these additional, unnecessary costs should be opposed by all operators, regardless of size, reimbursement to the municipality by successful bidders of bidding costs is a more equitable process.

I offer these specific proposals for this committee's consideration. Their primary aim is to facilitate the minority business person's access to capital which I stress is the major barrier to minority enterprise in this or any other industry. I have reviewed the recommendations of previous witnesses and these proposals support the concept of tax-based incentives to stimulate investment in minority enterprises.

1. Enable SBA to guarantee Industrial Development Bonds or Industrial Revenue Bonds for minority entrepreneurs in telecommunications. The effect for the enterprise is obvious both in tapping capital for construction and in cost of financing.

2. Expand FCC's efforts in providing technical assistance to minority and small enterprise ventures in telecommunications.

3. Large companies could be provided with tax credits similiar to Research and Development credits currently available in new technology areas to overcome the perceived high risk investment in minority ventures in telecommunications.

I would also like to report on the establishment of The Association for Entrepreneurs in Telecommunications (AETEC) which has its purpose the stimulation of minority enterprise in telecommunications. The association is a trade association for minority businesses involved in telecommunications or planning to expand into this industry. Through this network, we plan to help ourselves by developing important contacts in the financial and business communities in which we plan to move. We have recently established the orgnization, and a list of the Board of Directors is attached to my testimony for this committee's information. We hope that the committee will look to us as a source of information on the status of minority involvement in various industry segments of the telecommunications industry. Our focus is on the non-broadcast sector of the industry which we believe holds promise for minority enterprise.

I am sure this committee would not be examining this worthy subject if it were not aware of significance of this industry to minority enterprise. We can ill afford to let this industry develop and grow without our involvement. The impact of this industry is more than just economic; it is also political. All of the indicators point to an information explosion that is unprecedented in history. The media to carry this information will take different forms and minority businessmen and women must control some of these media.

AETEC BOARD OF DIRECTORS

Edwina Dowell, General Counsel, Spanish International Communication Corp., 205 Park Avenue, New York, New York 10177, (212) 953-7500.

Herb Hamlett, President, Pan American Telephone, 470 East Pace Ferry Road, Atlanta, Georgia 30363, (404) 237-1680.

Marsha Marinich, President, Future Enterprises, Inc., 1522 K St. NW., Suite 1100, Washington, D.C. 20005. (202) 393-2420.

Alex Mercure, President, Mercure Associates, 6826 Silver Lane, Annandale, Va. 22003, (703) 941-3934.

James Powell, President, Federal Tracking Systems, Inc., 161 Spring St., NW., Suite 823, Atlanta, Georgia 30303, (404) 525-4777.

James E. Whitehead, Jr., Legislative Staff Assistant, the Honorable Jack Kemp of New York, 2235 Rayburn House Office Building, Washington, D.C. 20515, (202) 225-5265.

James Winston, Partner, Rubin & Winston, 1737 H ~~Street, NW.,~~ 4th Floor, Washington, D.C. 20006, (202) 861-0870.

Lois Wright, Counsel, Inner City Broadcasting, 801 2nd Avenue, New York, New York 10017, (212) 953-0300.

Mr. MITCHELL. I want to thank all of the witnesses who came to be with us this morning. It has been very beneficial. I think we have received enough information from these two hearings to do an enormous amount of staff study and work to determine what direction we need to move in.

Thank you very much.

The hearing is now adjourned.

[Whereupon, at 10:10 a.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

CABLE TELEVISION INDUSTRY

WEDNESDAY, NOVEMBER 4, 1981

House of Representatives, Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems, Committee on Small Business,

Washington, D.C.

The subcommittee met, pursuant to notice, at 8:35 a.m., in room 2359–A, Rayburn House Office Building, Hon. Parren J. Mitchell (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN MITCHELL

Mr. **Mitchell**. Good morning. This is the third in a series of hearings on the cable television industry which have been conducted by this subcommittee. The focus of these hearings has been on local ownership and control of cable television. In the previous hearings—on September 23 and October 13 we obtained considerable information about the opportunities for the local independent small and minority business to own, construct, and service local cable television systems.

The smaller nonurban system operators, through their Washington representative have shared their views about an industry which they started in the 1940's. We have been told that over 50 percent of the cable industry today is comprised of systems servicing 5,000 subscribers per system or less and that this is still an industry made up of small operations running their own small businesses.

During the subcommittee's previous hearings, it was noted that no existing company has ever constructed cable TV systems of the type and size which are being considered by such cities as Washington, D.C., Detroit, Philadelphia, Chicage, Cleveland, St. Louis, Houston, Baltimore, or portions of New York and Los Angeles. Therefore, this subcommittee was told, there is no guarantee that a large company can provide better local cable TV service than could be provided by a local independent small or minority business.

This subcommittee has also been told that local independent small and minority businesses must overcome a public perception in competing to obtain local cable TV franchises. Apparently, local municipalities believe that bigger means better. The evidence in this area, however, does not appear to support the perception that bigger means better local cable TV service. Therefore, many of the more than 13 million local independent small and minority businesses in this country must be included in the ownership, construction, and servicing of local cable TV systems.

We are pleased to have with us today representatives of some of the very few local independent small and minority businesses which have successfully obtained local cable TV franchises. I want to thank them for coming out today to share their wealth of experiences with this subcommittee.

Before we start, I would like to call your attention to an article which is relevant to the purpose of these hearings. The article to which I refer is "Cable TV and Public Power Belong Together." This article appeared in the September-October, 1981 issue of the magazine Public Power, and the concepts of municipal ownership of cable systems is discussed extensively in it.

[The article referred to above follows:]

Cable TV and public power belong together

by **VIC REINEMER** *editor,* PUBLIC POWER

FROM SHREWSBURY, MASS., to Davis, Cal.—in cities as large as St. Paul, Minn., and as small as Primghar, Iowa—consumers are moving toward local ownership and control of cable television.

You can't call it a trend—at least not yet. Typically, cable TV franchises are awarded to large corporations. The bid and award system is often characterized by "rent-a-citizen" techniques—prominent local people are hired or given potentially lucrative stock in return for lobbying help. Rosy promises made in the competition to win favor of local officials and obtain the franchise are not always kept.

The number of U.S. cable TV systems almost doubled from 1970 to 1981. Some 4,200 systems in more than 10,000 communities reach one-fourth of the nation's homes. In a decade the number of subscribers has more than tripled to almost 21 million.

About half of these cable TV systems have from 500 to 5,000 customers; only 14 have more than 50,000 subscribers. Two-thirds of the systems carry from six to 12 channels, according to the National Cable Television Association. Many of them grew out of early community antenna hookups in regions too remote from stations to obtain a signal.

When PUBLIC POWER looked at cable TV almost 10 years ago(*) there were 18 known municipally owned cable TV systems, nine in towns with local publicly owned electric systems. Our current count (see p. 14) which may have missed some, lists 33, including 21 in communities served by public power.

Major league baseball may have gone to pot this year but there's a whole new ball game in cable TV. Satellite transmission and other new technologies have attracted large corporations and a panoply of investors, advertisers, and publicists into cable. The potential for profit is vast. So is the potential for community service—especially in cities and towns served by public power.

Conway, Ark., System New

The newest municipal cable TV system, which began operation last fall, is in Conway, Ark., a college town of some 20,000 population 32 miles north of

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(*) "A Marriage Proposal: Cable Television and Local Public Power," two articles by Louis Schwartz and Robert A. Woods and one by Jim Webster, November-December 1971 and January-February 1972 issues of PUBLIC POWER.

Little Rock on Interstate 40. Conway's experience suggests that locally owned cable TV has the same advantages public power has regarding rates, service and local control. Furthermore, Conway officials believe locally owned cable TV is especially suited to communities which operate their own electric power systems.

Conway citizens have provided themselves with electric power, water and sewer service for more than half a century, through the municipal Conway Corp. The city council governs the water and sewer system through the corporation, which has a separate board of directors for electricity and, now, cable.

The Conway Corp.'s board consists of five persons serving five-year staggered terms. The board elects its new members, subject to city council ratification. Policy for years has been to bring aboard a new member each year. The city council has never failed to approve a Conway Corp. board nominee, which says something about the thorough and cautious political work of the Conway Corp. and its general manager, James H. Brewer. He has managed the municipal corporation since 1965, following 10 years as assistant manager for electricity.

"Our cable TV evolved from a community antenna system," Brewer said in a May interview. "Fifteen years ago the city of Conway held back the cable franchise. I knew we had a pretty good chance of becoming a viable cable utility someday. The electronic people had shown us the opportunities—smoke sensors, break-in surveillance, other services. When cable became viable for us, after Federal Communications Commission regulations changed in 1979, we asked council members to look at it, and by then they were accustomed to the idea of locally owned cable."

Service Emphasized

Conway has broadened the already expanding concept of energy services delivery by public power systems. The Conway Corp. believes strongly in delivery of various services desired by the community, not only energy, water and sanitation, and at prices all segments of the constituency can afford. Attractive bulk rates are provided for cable TV subscriptions at senior citizen homes, the two colleges and one university, foster parent homes and motels.

"There's an advantage in having a service—rather than proprietary—orientation," said Brewer. "If cable is service-oriented you don't get sold a lot of add-ons.

The Conway, Ark., cable TV earth station ("dish") is mounted between an electric transformer storage shed and the city water tower, adjacent to the Conway Corp. office. General Manager James H. Brewer emphasizes that common use of facilities and personnel by the city's various utilities saves money for ratepapers. Photo by Vic Reinemer

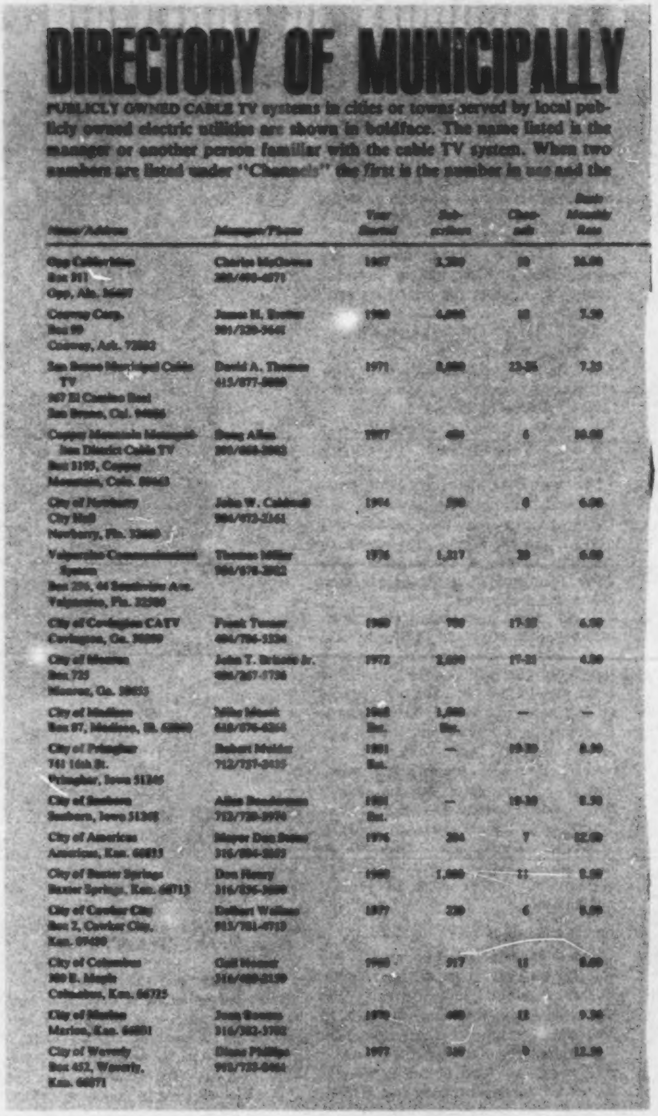
"We plan to provide fire and burglar alarms for an extra 30 cents per customer. Ultimately we plan other services such as banking. If the medical community here so decides it can avail itself of X-rays and use of CAT-scan (an expensive diagnostic machine which takes three-dimensional pictures of the interior of the body) over our community cable."

Electric Experience Valuable

Brewer believes the community's experience in running its own electric system gave it a leg up on providing cable TV.

"The inherent characteristics of municipal electricity are relevant to cable," he said. "There's a world of technical expertise here. We knew we had the in-house capability."

He sees cable as a means of obtaining better load control for Conway's public power system. "We're already using radio, and getting much stronger load control with industrial and commercial customers. Cable provides a more positive vehicle for signaling load management devices and therefore their operating time frames can be



DIRECTORY OF MUNICIPALLY

PUBLICLY OWNED CABLE TV systems in cities or towns served by local publicly owned electric utilities are shown in boldface. The name listed is the manager or another person familiar with the cable TV system. When two numbers are listed under "Channels" the first is the number in use and the

Name/Address	Manager/Phone	Year Started	Subscribers	Channels	Basic Monthly Rate
Opp Cablevision **Box 311** **Opp, Ala. [illegible]**	**Charles McGowan** **205/[illegible]**	1967	3,200	10	[illegible]
Conway Corp. **Box 99** **Conway, Ark. 72032**	**James H. Brewer** **501/[illegible]**	1980	4,000	18	7.50
San Bruno Municipal Cable TV **567 El Camino Real** **San Bruno, Cal. [illegible]**	**David A. Thomas** **415/877-[illegible]**	1971	8,000	23-26	7.25
Copper Mountain Metropolitan District Cable TV **Box 3195, Copper Mountain, Colo. [illegible]**	**Doug Allen** **303/[illegible]**	1977	400	6	10.00
City of Newberry **City Hall** **Newberry, Fla. [illegible]**	**John W. Caldwell** **904/472-2161**	1974	[illegible]	6	6.00
Valparaiso Communications System **Box 296, 44 [illegible] Ave.** **Valparaiso, Fla. 32580**	**Thomas Miller** **904/678-[illegible]**	1976	1,217	20	6.00
City of Covington CATV **Covington, Ga. [illegible]**	**Frank Turner** **404/786-[illegible]**	1969	700	17-[illegible]	6.00
City of Monroe **Box 725** **Monroe, Ga. 30655**	**John T. [illegible] Jr.** **404/267-[illegible]**	1972	2,600	17-21	4.00
City of Madison **Box 97, Madison, Ill. [illegible]**	**Mike [illegible]** **618/876-[illegible]**	[illegible] Est.	1,000 Est.	—	—
City of Primghar **741 10th St.** **Primghar, Iowa 51245**	**Robert Mulder** **712/757-[illegible]**	1981 Est.	—	19-20	[illegible]
City of Sanborn **Sanborn, Iowa 51248**	**Allen [illegible]** **712/729-[illegible]**	1981 Est.	—	19-20	8.50
City of Americus **Americus, Kan. 66835**	**Mayor Dan [illegible]** **316/[illegible]**	1976	204	7	12.00
City of Baxter Springs **Baxter Springs, Kan. 66713**	**Don Henry** **316/856-[illegible]**	1980	1,000	11	[illegible]
City of Cawker City **Box 2, Cawker City, Kan. 67430**	**Delbert Wallace** **913/781-4713**	1977	220	6	[illegible]
City of Columbus **300 E. Maple** **Columbus, Kan. 66725**	**Gail [illegible]** **316/429-[illegible]**	1980	917	15	[illegible]
City of Marion **Marion, Kan. 66861**	**Joan [illegible]** **316/382-[illegible]**	1970	400	12	[illegible]
City of Waverly **Box 452, Waverly, Kan. 66871**	**Diane Phillips** **913/733-[illegible]**	1977	300	9	12.50

more closely coordinated with peak load periods. Furthermore, with cable the load control programs can be more sophisticated and complex."

Brewer said ownership of rights-of-way and electric utility poles is certainly an advantage to public power systems going into cable. But the big "plus," he emphasized, is ownership of aerial-type equipment and people with operational expertise.

"The same equipment and expertise advantage applies to underground as well as overhead construction, and much of our cable system is underground."

"We'll use cable for meter reading," Brewer said. "We don't have two-way capability yet but will have it."

Conway's monthly rate for 16 basic channels is $7.50. Two additional entertainment channels, "Showtime" and "The Movie Channel," are available at $8 each or $15 for both.

Installation charges are $25 for the first outlet and $12.50 for each addition. Previously wired structures are connected for half price. Three rates are available for bulk customers; they vary according to who provides electronic equipment and who is responsible for maintenance and replacement. Conway Corp. found that some bulk customers, such as college dormitories and smaller motels, wanted only basic service, without the extra entertainment channels.

One remunerative surprise was the number of households which pay an extra $4 per month for additional cable outlets.

"We have one fellow with seven TV sets," said Brewer.

Sign-Up Underestimated

When planning the system, Conway Corp. underestimated both the number of citizens who would sign up and the popularity of premium channels.

"We projected 3,000 customers, at an average $11.50 rate," said Brewer. "We'll reach 4,000 customers—we are still attaching every day—and revenues are averaging $15.50. We have 6,700 residential electric meters. So we projected about a 50 percent sign-up and will reach more than 60 percent."

Conway's cable TV was financed with a $1.5 million surplus in the electric department. Carrying a 7 percent interest charge, the money will be paid back over 25 years. Payback has already started. The electric department loaned an additional $200,000, which is being paid back over three years, to cover a shortfall.

Anticipated gross cable revenue for the first year of operation is $450,000. Three percent of gross revenues will be returned to the city for the franchise payment, and 10 percent of gross revenues less debt service will go to the city as lease payment. (The city owns the system and leases it to Conway Corp.; the lease payment can be compared with a dividend in a private firm.

"We are anticipating returning to the city approximately $45,000 plus ap-

OWNED CABLE TV SYSTEMS

second the number available.

This list was compiled by PUBLIC POWER by telephone in July 1981. Additions or corrections from readers will be appreciated. Send changes to editor, PUBLIC POWER, 2600 Virginia Ave. NW, Washington D.C. 20037.

Name/Address	Manager/Phone	Year Started	Subscribers	Channels	Basic Monthly Rate
Community Service, Inc. 325 Ann St. Frankfort, Ky. 40601	Ben Fowler 502/223-3477	1952	7,410	[illegible]	3.50
City of Crystal Falls 401 Superior Ave. Crystal Falls, Mich. 49920	Walter E. Hagglund 906/875-6630	1959	800	8-21	4.50
Iron River Cooperative TV Antenna Corp. Iron River, Mich. 49935	Jerry Ward 906/265-3810	1957	[illegible]	12	4.00
City of Norway CATV Box 194, Norway, Mich. 49870	Junior Stanchina 906/563-8641	1954	1,400	9	3.25
Wyandotte Municipal Service Commission 140 Elm St., Wyandotte Mich. 48192	Dale Simmons 313/282-7100	1982 Est.	—	—	—
Bagley City Cable TV Box M, Bagley, Minn. 56621	Bernie Stavig 218/694-2300	1976	320	9	7.85
City of Fosston Cable TV Fosston, Minn. 56542	Russell Earls 218/435-1737	1976	350	10	5.75
Jackson Municipal TV System 504 2nd St., Jackson, Minn. 56143	Kevin Murray 506/847-3323	1957	1,200	10-12	5.00
Newburg Cable TV System Newburg, Mo. 65550	Barbara MacCormic 314/762-2315	1969	260	6	5.00
Unionville Cable Authority 1611 Grant St., Box 255, Unionville, Mo. 63565	Dennis Sheehan 816/947-2160	1980	720	13	8.00
Cascade Locks CATV Box 308, Cascade Locks, Ore. 97014	Ken Hobson 503/374-8484	1972	366	10-13	6.75
Town of Lexington Lexington, Ore. 97839	Mayor Ed Baker 503/989-8116	1959	100	8	$5.00
New Wilmington Borough Cable TV 140 West Neshannock Ave., New Wilmington, Pa. 16142	Ed Garrett 412/946-8167	1979	300	12	6.00
Pitcairn Community Antenna System 582 - 6th St. Pitcairn, Pa. 15140	George Myers 412/372-6500	1953	1,000	10	3.00
Rouseville Television Club Rouseville, Pa. 16344	Charles Licht 814/676-2171	1957	275	8	3.00
City of Sumas TV Cable System Box 5, Cherry St. Sumas, Wash. 98295	Lawrence Silvis 206/988-5711	1953	230	7	4.50

plying $129,000 to liquidation of capital debt service in the first year of operation," said Brewer. "Obviously upon retirement of indebtedness the system will produce a substantial benefit to the city and still retain a significant portion of cash flow for further capitalization of the cable system."

Installation Simple

Conway Corp. brings cable from its utility poles to a grounding block installed within two feet of the electric meter on the outside of a subscriber's house. A ground wire from the block protects the electric meter from lightning damage. Another wire carries the signal to the television. Conway Corp. staples this wire around the outside of the house, as unobtrusively as possible, and drills and caulks a hole in the wall where the wire enters the room(s) with TV.

Subscribers who would rather have the wiring run through their attic or under their floor have to do that themselves or hire an electrician. Conway Corp. will provide the wire and test the wiring before hooking up the cable, but will not be responsible for faulty wiring unless done by its employees.

No First Amendment Problem

Nationally, one of the arguments used by private cable TV firms to discourage cities and towns from themselves entering the potentially lucrative cable TV business is that municipal control of a cable system violates the First Amendment; the government is dictating what people see and hear. That argument doesn't play in Conway.

"We've had a philosophical discussion or two about it but no problem," said Brewer. "Sixteen fellow citizens are making the decisions. Somebody has to choose."

(See editorial column on cable TV and public power on page 104.)

The 16-member program committee, established by city ordinance, includes the mayor, who serves as chairman, three persons named by the presidents of the local colleges and university, one member selected by the Conway Ministerial Alliance, another by the school board, eight citizens appointed by the eight aldermen, the chairman of the city council's utility committee and the manager of the Conway Corp. or his designee.

Elected officials serve during their term of office; the terms of aldermen and their appointees coincide. The manager of the Conway Corp. serves as long as he holds his job. The five other board positions are five-year terms, staggered so one will expire each year.

Basic channels selected by the committee include three from Little Rock (the three major networks); independent stations in Atlanta (WTBS), Chicago (WGN) and New York (WOR); CNN Cable News Network; U.S.A. Network; ESPN Sports Network; Children's Programming, CBN Christian Broadcast-

continued on page 17

ing, CMN Christian Media, the weather channel and KETS Conway educational TV.

University Handles Public Access

One channel is assigned to the University of Central Arkansas in Conway. (The state educational TV organization is headquartered there.) The fine arts and continuing education departments handle programming—including public access—on this channel; its main thrust is continuing education. The Conway Corp. will run the public access channel which is now being used for program display.

Both Brewer and Conway Corp. President Frank Robbins III, editor and publisher of the local daily LOG CABIN DEMOCRAT, say the municipal corporation's tradition of local involvement gave them and the community confidence they could build and operate cable TV.

Brewer estimates he has received calls from about 30 communities, across the country, that are interested in locally owned cable TV. He smiles when he contrasts the cable TV situation in Conway and Little Rock:

"We've watched Little Rock and seen the fragmentation and lawsuits over who gets a franchise. They end up with a company that has sold them the moon. There are people doing business in Little Rock staying in Conway right now because of our cable TV."

Upgrading Old Systems

Some of the early municipally owned cable TV systems are upgrading their facilities. One of them is Crystal Falls, in Michigan's Upper Peninsula, which began operation in 1959. It had eight channels but after upgrading and installing a $15,000 earth station (receiving "dish") this summer has a capability to receive 21. The dish will save $500 a month for the system which, with 800 subscribers, has an 85 percent penetration in the community.

"We'll get our money back from the earth station in two and a half years," said City Manager Walter E. Hagglund. "And we won't have to raise our rates from $4.50 a month.

"This town provides its own electricity, sewer, water, hospital, cemetary, park, lakesite and golf course—all but gas," he said. "And we're the only one in the county that isn't up to charter limitation on its tax rate."

The city council of Wyandotte, Mich. (pop. 38,000), voted in April for a municipally owned cable TV system, despite strong representations by investor-owned cable companies. The decision followed an 18-month study which forecast cable revenues for the city of $3.4 million over a 15-year period—$2.2 million more than from private firms.

General Manager Brewer eyes instruments at the Conway cable TV "head end," where TV signals are processed and prepared for distribution. Construction of the municipal cable TV system was financed by a $1.7 million loan from the electric department. Payback has already started. The city also receives franchise and lease payments from the public cable TV system.

If problems relating to charter clarification and division of revenue are solved on schedule, construction of the cable system—expected to take one year—will start this fall. Construction costs of $1.7 million will be funded through a lease arrangement with a private firm which will own the system initially. The city will build equity as it pays the initial owner and have an option to buy the system outright.

"There are so many things a cable system is able to do," said Wyandotte (Mich.) Municipal Service Commission General Manager Dale O. Simmons. "I feel very strongly that too many cities have gone into it too fast." Wyandotte plans to use cable TV for meter reading and load management. Photo by Nancy Wenzel, WYANDOTTE (MICH.) NEWS-HERALD

The Wyandotte Municipal Service Commission which provides electric power and water will be in charge of the cable system. General Manager Dale O. Simmons said the city plans to use cable for electric meter reading and, eventually, load management.

"There are so many things a cable system is able to do," said Simmons. "I feel very strongly that too many cities have gone into it too fast. Once you grant a franchise you've allowed a utility to come into your city and for all practical purposes you're stuck with them for life."

Joint Action Helped Iowa Towns

Two public power towns in northwest Iowa—Sanborn and Primghar—are already applying joint action to cable TV. Located about seven miles apart, they will save $50,000 to $60,000 by sharing the "head end" (the facility which receives and processes the TV signals and prepares them for distribution), transmission facilities and maintenance personnel.

"Wes Birdsall (general manager of Osage, Iowa, Municipal Light & Power) got us interested in load management possibilities of cable last year," said Sanborn Superintendent Allen Bonderman," even though his system hasn't gone into cable yet. We looked at the nonprofit municipal cable setup in Unionville, Mo., and are using a similar organization in Sanborn. Primghar will own its share of the system and so will we after we pay off the nonprofit corporation.

"Feasibility looked good but our problem was finance. We needed $300,000. Primghar is raising its share by general obligation bonds and Sanborn is using revenue bonds. Our local bank is backing us."

In April 90 percent of the voters in Sanborn and 87 percent in Primghar backed public cable TV. The system is scheduled to be on the air Dec. 1. Subscribers will pay $8.50 monthly for 19 basic channels. (The system will have a 30-channel capacity.)

Town officials project a 55 percent sign-up and seven-year repayment of debt. Bonderman said they hope to be using the system for electric load management next year.

Franchise Value Enormous

Popular support for municipally owned cable TV—and a half-million dollar bond issue to finance it—was also demonstrated by a two-to-one majority in a survey conducted by the Shrewsbury, Mass., Board of Selectmen last fall. In the same survey townspeople voted three to one (1,672 to 514) against licensing a private company to construct and operate the cable system.

"The CATV franchise has a value of $1,000 to $1,200 per subscriber, and once given away it cannot as a practical matter be recovered."

Shrewsbury's Electric Light Plant submitted its application for the franchise in June. An advisory committee is scheduled to make a recommendation to the board this fall from among proposals of the municipal and three investor-owned applicants.

The Shrewsbury system's manager, APPA President-elect James E. Baker, told the board of "three prominent advantages" to be derived from municipal ownership and operation of the cable TV system: local control, lower costs and franchise value:

"The CATV franchise has a value of $1,000 to $1,200 per subscriber, and once given away it cannot as a practical matter be recovered. Substantial economic advantage can be gained through joint use of facilities and personnel by the cable and electric operations.

"Policies and subscriber rates should be determined locally rather than in a boardroom in New York or Chicago," said Baker. "A great many services capable of being furnished by the cable system will be used by municipal departments as well as local subscribers and it should be a matter of local determination when these services will be made available."

"We'll get our money back from the earth station in two and a half years."

Baker believes that the full potential of cable TV for community service would not be realized through private development. "The potential for cable, especially in conjunction with computers, is enormous," he said.

Big Cities Interested

Larger cities without public power are also considering local ownership and control of cable TV, through either public or cooperative ownership. The St. Paul, Minn., Cable Cooperative culminated a lively educational and organizational campaign in January by presenting the city council petitions from 5,000 citizens and dozens of witnesses favoring a cable cooperative.

The council undertook a study and in May rejected franchise applications from seven companies and voted to establish a tax-exempt nonprofit organization to build and run the cable system. St. Paul plans an 80- to 90-channel system financed by sale of $41 million in Port Authority industrial bonds yielding about 11 percent interest. The nonprofit organization, according to Joanne Showalter, head of the city council subcommittee studying cable, will free the cable managers from political pressure to censor programs.

"St. Paul plans an 80- to 90-channel system financed by sale of $41 million in port authority industrial bonds yielding about 11 percent interest."

St. Paul's twin city, Minneapolis, is studying municipal ownership of cable. So is St. Louis, Mo., with special emphasis on a nonprofit cable organization. Paterson, N.J., is building a system which it will lease out, except for six channels reserved for the city.

In Washington D.C. a cable television task force recommended in March creation of a semipublic cable TV corporation which would go to the private marketplace to finance construction. The corporation would determine how many channels would be devoted to public service and how to award access to channels.

State Law May Be Limiting

Across the Potomac from Washington in suburban (pop. 597,000) Fairfax County, Va., cable TV became a red-hot potato last year. News accounts described fee and stock arrangements between firms seeking a franchise and influential local citizens.

The board of supervisors bucked the issue to its Consumer Protection Commission. After studying ownership options (and other aspects of cable TV) the commission found investor ownership the most viable "in view of legal and practical problems associated with public ownership and financial and operational problems related to cooperative ownership possibilities."

Virginia law permits municipal cable systems only in communities otherwise unable to receive a satisfactory TV signal. Amendment of the law to authorize public ownership in Fairfax County was considered unlikely, given the state legislature's antipathy toward home rule in general and in northern Virginia in particular.

The Fairfax County experience underscores the importance of close attention to state statutes by any community considering municipally owned cable TV. Cable is seldom mentioned in statutes regarding grants of powers by the state. Legal interpretations or amendment of state laws may be necessary. Additionally, municipal bonds may be sold only for specific purposes in some states; legislation to include cable bonds may be required.

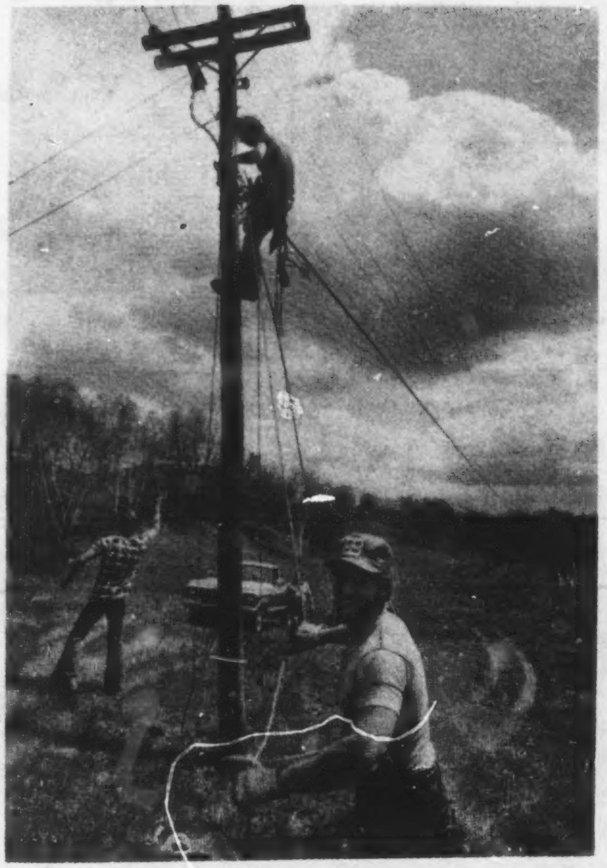
New Co-op System in Wisconsin

The argument of investor-owned firms that local institutions cannot successfully own and operate a modern, sizable cable TV system obviously has not impressed a number of municipalities—and cooperatives as well. A cable co-op has served Trempealeau County in west central Wisconsin since 1979. The Western Wisconsin Communications Cooperative (WWCC) headquartered in Independence has [illegible] channel capacity, with 18 channels already in use.

Eight of them provide two-way service for the county's eight rural school districts. This means students around the county can participate—without leaving their home school—in classes being held at any other school in the county.

The school channel also has access to the county channel, for which senior citizens of Trempealeau County provide two and one-half hours of local programming each week day. Their programs—both live and taped—often feature local history, trades, industry and music.

"We have 2,700 subscribers and are growing every day," said Bill Urban, WWCC secretary and Blair School District superintendent. "We've already laid 137 miles of hard cable. Our county has a population of about 23,000 and is 62 miles by 26 miles. Our long-range goal is to make cable available to every home in the county. We also provide some service outside Trempealeau."



Twenty-eight various cooperatives helped establish the Western Wisconsin Communications Cooperative in Trempealeau County, Wis., providing both labor and seed money.

With density averaging only eight persons per square mile, costs had to be kept to a minimum. Broad community support helped.

"I remember when rural electrification came and people said it wouldn't work. But it did, and so can co-op cable. Here's $5 for my son and $5 for my grandson."

"Twenty-eight local co-ops helped with seed money," said Urban. "Each school district put up $1,000. We sold $100 preferred equity certificates which won't bring a return for some time.

"We've sold a lot of $5 membership, especially to older folks who came up and said, 'I remember when rural electrication came and people said it wouldn't work. But it did, and so can co-op cable. Here's $5 for my son and $5 for my grandson.'"

Principal financing came from the Farmers Home Administration, which loaned $1,256,000 at five percent interest for 15 years, plus $60,000 for an earth station. Urban stressed the importance of a $510,000 grant from the W. K. Kellogg Foundation which helped get the school programs going and nearby universities involved.

The basic rate in Trempealeau County including the ESPN (sports) channel is $8.75 a month. Two movie channels require extra payment.

Community Potential Vast

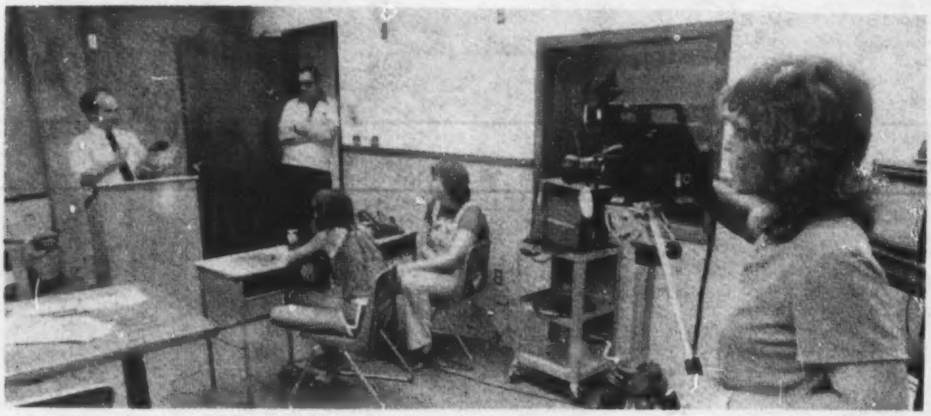
Unlike Trempealeau County, most co-op cable systems are small community antenna operations. The cooperative communications project of the National Citizens Committee for Broadcasting (NCCB)—which has provided assistance to many co-op groups—counted 76 such systems. However, a modern, state-of-the art cable co-op is a possibility in Davis, Cal., where the city council has awarded the cable franchise to a subscriber cooperative pending completion of a feasibility study by the National Consumer Cooperative Bank. Other communities considering co-op cable TV include Boulder, Colo.; Milwaukee, Wis.; and Oberlin, Ohio.

"Cable TV will to a large extent be a monopoly," said Bruce Jacobs, director of the NCCB's cooperative communications project. "Cable TV is potentially too great a community resource to be left to commercial interests. Development will depend on both technology and a commitment to public service. The technology is wonderful, but alone it is not enough. There must also be that interest in using it for the common good."

(The University of Wisconsin Center for Research and Educational Improvement is sponsoring a conference Sept. 28-30 in Eau Claire, Wis. regarding cable TV and educational development in rural communities. Details are available from the center's director, Ray Szymanski, 715/232-1393.)

Consumer Cable TV Workshop?

APPA is considering sponsorship of a workshop on establishment and operation of consumer-owned cable television systems. If you are interested in participating please write or call Jeff Tarbert, American Public Power Association, 2600 Virginia Ave. NW, Washington, D.C. 20037 (202/342-7200).



Debbie Sveen, creative writing instructor in the Trempealeau County, Wis., summer school session, puts visiting journalist Robert Gibson of RURAL ELECTRIFICATION *magazine on camera. Students watching at other county schools questioned Gibson over the two-way cable TV. Standing in the doorway is Bill Urban, Blair School District superintendent and secretary of the cable co-op.* Photo by Rod Moen

for further action

Resources for persons and communities interested in locally owned cable TV systems include, in addition to APPA *and persons named in the preceding article and directory:*

Cooperative League of the United States of America (CLUSA), *1828 L St. N.W., Suite 1100, Washington, D.C. 20036, Carol James, 202/872-0550;*

National Citizens Committee for Broadcasting, Box 12038, Washington, D.C. 20005, Bruce Jacobs or Sam Simon, 202/466-2520;

National Federation of Local Cable Programmers, 4601 S. 31st Rd., Apt. A 1, Arlington, Va. 22206, Sue Buske, 703/820-8890;

National League of Cities, 1301 Pennsylvania Ave. N.W., Washington, D.C. 20004, Susan McAdams, 202/626-3115;

National Rural Electric Cooperative Association, 1800 Massachusetts Ave. N.W., Washington, D.C. 20036, Tom Hoy, 202/857-9500;

National Telephone Cooperative Association, 2626 Pennsylvania Ave. N.W., Washington, D.C. 20037, Bob Leigh, Amy Gross, David Cosson, 202/342-8200;

St. Paul Cable Cooperative, 411 Main St., St. Paul, Minn. 55102, Neal Gosman, 612/227-1253.

Mr. MITCHELL. Our special counsel for this hearing is Derrick A. Humphries who is seated to my right and Sarah Etheredge, my staff assistant.

The witnesses in order will be: Donald T. Templeman, Deputy Administrator, SBA, Washington, D.C.; Dr. William Douglas, president, Gary Communications Group, Gary, Ind.; Zakee Ameer Rasheid, executive vice president and director of franchises, Telecable Broadcasting, East Cleveland, Ohio; Alex Mercure, president, Mercure Telecommunications, Arlington, Va.; and John Mansell, Jr., editor, Cable TV Security & Cable TV Regulations, Falls Church, Va.

Once again, the issue is how a local independent small or minority business can own, construct, and service a local cable TV system. We will now hear from Mr. Donald Templeman.

Mr. TEMPLEMAN. Good morning, Mr. Chairman.

Mr. MITCHELL. You have been a witness so many times, we don't have to tell you how to proceed. You can read your statement in its entirety, or highlight it and submit the whole thing for the record.

TESTIMONY OF DONALD R. TEMPLEMAN, DEPUTY ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION, ACCOMPANIED BY CHUCK HERTZBERG, ACTING ASSISTANT DEPUTY ADMINISTRATOR FOR FINANCIAL ASSISTANCE

Mr. TEMPLEMAN. I will read it, Mr. Chairman.

It is a pleasure to appear before this subcommittee to discuss the Small Business Administration's activity in the cable television industry and the role envisioned by the SBA to assist small and minority businesses in the financing, ownership, construction, and servicing of cable television.

I am accompanied this morning by Chuck Hertzberg, Acting Assistant Deputy Administrator for Financial Assistance.

This industry originated in the late forties to supply television to rural areas where big-city broadcast signals wouldn't carry. Its major expansion has occurred in the past 10 years, as cable TV has moved into metropolitan markets.

In 1972, with the advent of satellite technology and the partial lifting of a 6-year freeze by the Federal Communications Commission on cable development, larger cities became ripe for cable development. Added to this, Home Box Office in 1975 commenced delivering movies over cable systems via the Satcom satellite. Since 1975, the number of CATV subscribers has risen by about 50 percent to close to 17 million, or 1 out of every 5 households.

As for the future, the possibilities are enormous. Newer systems, using fiber optics technology, could carry as many as 300 TV channels, compared to the 12 channels of older systems. And, two-way transmission between homes and businesses will open up new communications opportunities.

It has only been in the last 3 years that a period of mergers has begun among cable companies and between cable companies and other businesses. Today, approximately 10 large companies control approximately 40 percent of the country's subscribers. However, unlike other industries, a significant proportion of businesses are still independently owned. It is estimated that 25 percent of the cable TV systems is owned by independent operators, who serve 15 percent of cable TV subscribers.

Existing independent operators seldom venture into big city franchising. The expenditures involved in the bidding process for big city franchises often run into the millions of dollars. Prior to January 27, 1978, SBA loan policy precluded assistance to newspapers, publishers, film or tape producers, radio or television broadcasters, and cable TV operators engaged in program origination.

Loans to the media have been prohibited for three reasons: First SBA wished to avoid the charge that the Government was attempting to control editorial policy by subsidizing the media. Second, citizens of this country have typically opposed Government identification with concerns that might publish or produce matters of a controversial nature. Third, SBA recognized that the constitutionally protected rights of freedom of speech and press ought not be comprised either by the fear of Government reprisal or by the expectation of Government financial assistance.

SBA decided in 1978 to lift the restriction with respect to broadcasting and cable TV. This decision was based upon the assumption that SBA loans and loan guarantees would not cause any significant increase in governmental involvement since broadcasting and cable TV are already government-regulated industries.

GOVERNMENT-REGULATED INDUSTRIES

Cable TV systems are franchised by local governments and are under the general regulation of the Federal Communications Commission.

Because the cost to purchase or construct a cable system is very high, SBA has been limited in the number of businesses it can assist. SBA's present size standard for cable TV is $3 million. Our $500,000 loan guarantee limit does not go very far when it costs from $8,000 to $12,000 per mile to run cable lines along telephone poles, or purchase studio equipment costing about $200,000 for one piece of color equipment. One source estimates that the cost to build a 30,000-subscriber system could be $12 million in capital cost alone. Cable systems being created in the largest cities may cost over $100 million.

REGULAR BUSINESS LOANS

Since 1979, SBA has approved a total of 458 loans under our regular business loan program to small firms in radio, TV broadcasting and communication ~~services (~~includes cablevision service). The value of these loans is almost $98 million. I have included a table in my statement that gives a further breakdown of these loans. All of that is not cable TV, the way our statistics are gathered. It includes cable TV but has other things in it as well. For radio, minority is 10.9 or 41 million——

Mr. MITCHELL. Excuse me a minute. Can you give us some precise figures on cable?

Mr. HERTZBERG. I'm afraid we can't. The SEC does not break out cable TV operations.

Mr. **Mitchell**. I should let you finish your statement. I will in just a moment. Just from your best recollection, do you know whether any loans have been made for cable?

Mr. **Hertzberg**. Yes, Mr. Chairman, some loans have been made for cable operations. I am sure it is limited. Personally, I remember one way back in 1963. We don't have a way to identify the exact number.

Mr. **Mitchell**. Go ahead.

Mr. **Templeman**. Other sources of SBA-related financing are the Small Business Investment Companies and the Minority Enterprise Small Business Investment Companies. SBIC's operate within SBA regulations, but their transactions with small companies are private arrangements. Their funding comes from private sources and SBA.

Cable TV is a new field for SBIC's, and presently accounts for about 2 percent of annual SBIC financing of small firms. In 1980, SBIC's provided an innovative financial package for a major cable system in Atlanta, Ga. During calendar year 1981 some 19 SBIC's participated in providing venture funds for nine cable TV systems with a total SBIC investment of $4.6 million. During that same period, two MESBIC's invested some $277,000 in three cable TV system financings. Finally, two relatively new SBIC's and one pending SBIC applicant intend to specialize in financings related to the communications field, including cable TV.

The Office of Chief Counsel for Advocacy in SBA has been supportive of congressional and agency attempts to tier laws and regulations so that entities such as small cable systems would not be adversely impacted. In this regard, Advocacy has supported efforts to differentiate between large and small business in the drafting of statutes and regulations. The chief counsel has suggested that actions taken to soften the growing strength of larger cable concerns should not also be allowed to put an end to the growth of the smaller cable systems.

Through their monitoring responsibilities under the Regulatory Flexibility Act of 1980, the Office of Advocacy has attempted to sensitize Federal regulators to the concerns of small cable operators and owners. We are encouraged by some of the actions that we have seen in Congress. For example, this summer, proposed revisions of the Copyright Act of 1976 included provisions which exempted from copyright liability cable systems with fewer than 5,000 or 2,500 subscribers.

In conclusion, Mr. Chairman, I would point out that SBA's present loan limits restrict its business loan financing to only the smaller cable TV systems, unless outside sources of financing are found. SBIC's and MESBIC's can and are playing a role in financing small businesses in cable TV. Let me assure you that wherever we can, we will assist small business.

Mr. Chairman, I would like to request that certain background material be made part of the record of my remarks. This concludes my testimony. I would be pleased to respond to any questions.

[Mr. Templeman submitted the following background material to his testimony:]

7(a) Direct and Guaranteed Loans

Fiscal Years 1979 - 1981

($ in millions* Number of Loans in Parentheses)

	Radio	TV	Communications**	Totals
Minority	10.9 (41)	3.9 (9)	2.5 (12)	17.2 (62)
Non Minority	42.8 (192)	3.9 (18)	33.8 (186)	80.5 (396)
Totals	53.6 (233)	7.8 (27)	36.3 (198)	97.8 (458)

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*Totals may not add due to rounding.

** There is no computer code identifier for cable television alone. This category covers areas such as ticker tape services, radar station operation, telephoto service, etc.

BACKGROUND MATERIAL

Cable TV operators are required to submit yearly reports to the Federal Communications Commission. From a summary of these reports for the year 1979, the latest year available, several interesting observations can be made.

The operating income per subscriber, before depreciation and amortization of equipment, remains fairly steady from the smallest systems, those with under 1000 subscribers to the large systems, those with over 5000 subscribers. However, after depreciation and amortization of equipment, the before-tax profit per subscriber rises from $4 per subscriber in the smallest systems to $14 per subscriber in those systems of over 5000 subscribers. This is because the cost of equipment is spread over many more subscribers as the system size gets larger. These figures are averages and there will be variance among individual firms in each size category.

On a per firm basis, systems with less than 1000 subscribers averaged $1900 in before-tax profits on an average of $63,000 in operating revenues, a margin of 3 percent. Systems between 1000 and 5000 subscribers had a 7 percent before-tax profit margin, averaging $21,700 profits on $304,000 operating revenue. Those systems with over 5000 subscribers had a before-tax profit margin on operating revenues of over 12 percent, averaging $210,000 before-tax profits on revenues of $1,700,000. From these data we can see that a small system is not nearly as attractive an investment as a larger system, with its 12 percent before-tax profit margin on operating revenues.

Those larger systems averaged 15,000 subscribers and carried an average of $2,144,000 in fixed asset value on their financial statements. With costs rising every year we could expect a 15,000 subscriber system today to require over $3,000,000 in fixed assets.

SBA's present loan limits restrict its business loan financing to only the smaller cable TV systems, unless outside sources of financing are found.

Subscribers at end of 1980 --- 17,300,000
Subscribers expected at end of 1981 --- 19,000,000

An increase of almost 10%

By end of 1980 - 6,500,000 subscribers or 38% of all subscribers also had premium pay cable service (in addition to basic service)

Consumer demand for premium cable programing is now the moving force for growth and profitability in the industry.

Non-entertainment uses such as advertising are not used now significantly but may be appropriate in the future as subscriptions grow.

By 1985, the U.S. Department of Commerce projects:

27.8 million basic subscribers
16.0 million subscribers taking a premium service in addition to basic service

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Source of Above U.S. Department of Commerce U.S. Industrial Outlook 1981

AS OF OCT. 1979

SYSTEMS	SUBSCRIBERS
14	50,000 & Over
108	20,000 - 49,999
244	10,000 - 19,999
391	5,000 - 9,999
289	3,500 - 4,999
1259	1,000 - 3,499
1801	Under 1,000
74	Subscribers not available
4180 Systems	

Source T.V. Digest 1980

Based on the above about 75% of all cable TV systems had less than 3500 subscribers, and most of these smaller systems had less than 1000 subscribers.

As of April 1, 1981 - The top 50 system operators had a total of 14,300,000 subscribers or approximately 83% of all subscribers, and each of these 50 larger system operators had over 63,000 subscribers. The largest three had over one million subscribers.

Mr. Mitchell. Thank you very much for your testimony. I guess I have a request rather than a question. I think it would be helpful if you could develop a system by which you could break out your cable TV loan cable business. This is a mushroom industry still, and I think somewhere down the line, we would like to be able to show that through your office, through its help, *x* number of small firms dedicated to cable were started. You can't do that now because of the system that you are using. If you could devise such a system, I think it would be helpful. Admitted, that your loan amounts, by law, are limited, and that ceiling restricts participation in the cable. Still, it seems to me that one way that you can get around that limitation is through multiple franchising. Let's say it would cost $12 million, but if you add a number of franchises, then perhaps you might be able to participate in getting the package together.

Has SBA taken a position with regard to multiple franchising?

Mr. Templeman. No; we have not.

Mr. Mitchell. What is your general attitude toward it?

Mr. Templeman. We've had some problems with franchise arrangements in the past and a number of hearings have been held on the Hill. Basically, we are in favor of loaning to franchisees, where it is clear that they are independently owned and operating small businesses. As long as that is applied, certainly they are eligible for the assistance.

What you suggest sounds like a reasonable way to solve part of the high capital cost problem.

Mr. Mitchell. I would think perhaps the Office of Advocacy could take a position on this. The big struggle going on in the cities right now is whether or not you go for single or multiple franchising.

In prior years, I have indicated my growing concern over the concentration of control of cable, particularly in the cities by 8 or 10 large companies. I think there are dangers there.

Mr. Templeman. We share that.

Mr. Mitchell. It might be helpful in the Office of Advocacy to take a position which would serve as a guidepost with regard to the local franchise.

Mr. Templeman. We will look into that.

Mr. Mitchell. Thank you.

Any questions?

Mr. Blackistone. Is there anyone on the staff of the SBA who is qualified to provide management assistance to cable system operators, the kind of technical assistance that is often lacking in smaller firms?

Mr. Templeman. Not to my knowledge.

Mr. Blackistone. Does the Office of Advocacy have anyone whose primary function is to follow cable TV issues?

Mr. Templeman. No.

Mr. Mitchell. Thank you very much, gentlemen. I hope you can stay around a little while with us this morning.

Our next witness is Mr. Leopoldo E. Guzman, vice president, Chase Manhattan Bank.

When you go back to the bank and as you circulate in the private sector, tell them in Congress we start hearings early in the morning. We don't loaf away the day, start at noon. Help to dispel the notion.

Mr. **Guzman**. That notion does not exist.

Mr. **Mitchell**. Thank you very much for being with us this morning. You can submit your testimony either in its entirety or you can read it in the entirety or you can highlight it. Do we have copies of your testimony?

Mr. **Guzman**. You do. I will present it almost in the entirety.

Mr. **Mitchell**. I would appreciate that.

Mr. **Guzman**. There are departures and caveats that should have been there.

Mr. **Mitchell**. That would be helpful. I just got it. I haven't had a chance to read it.

TESTIMONY OF LEOPOLDO E. GUZMAN, VICE PRESIDENT, MERGERS AND ACQUISITION DIVISION, CHASE MANHATTAN BANK

Mr. **Guzman**. My name is Leopoldo Guzman. I want to thank the chairman and the members of this subcommittee for the opportunity to speak on a topic of great importance, the future role of minorities in the cable television industry. Before I begin, I would like to state for the record that the views that I will present are strictly my own and they do not necessarily represent the opinion or view of my employer, the Chase Manhattan Bank. I am a vice president in the Mergers and Acquisition Division of the Chase Manhattan Bank, and have been in that position for almost 2 years. Before joining the bank in 1980, I was a member of the corporate finance department of a major investment banking house in New York.

Entry into the cable television business can be accomplished in two ways: First, by obtaining a franchise and building a new system; or second, by purchasing an existing system. The economics and methods of these two approaches to ownership are quite different and, therefore, policies designed to encourage them must also differ. Therefore, my remarks this morning will cover these two alternatives separately.

I would like to depart from the written testimony and add the caveat, the comments I make regarding new franchises really apply to medium size franchises, which is the environment that I operate in. I am not qualified to speak as to the very small franchises. All the witnesses are far better than I am to speak to that.

I will briefly make some general comments on the first method of entry; the acquisition of a franchise and subsequent building of a new system. I am not optimistic about the effectiveness of this approach. Then, I will focus on the second alternative, that is the acquisition of existing sytems, which is where I feel the real opportunity for minority ownership exists.

Although I have not seen the complete record of the earlier hearing before this subcommittee, I understand from reporting that appeared in Broadcasting Magazine that comments made before this subcommittee have postulated that the entry of minorities into cable television has been stymied by the lack of capital available to minorities for the building of new franchises. While it is true that minority communities do not have a great deal of investment capital, it is not accurate to attribute the underparticipation by minorities solely to a lack of capital.

In my opinion, what has kept minorities from obtaining franchises and building new systems is not only lack of capital, but also the lack of managerial and technical resources, and financial sophistication that is necessary to exploit the opportunity. A number of instances, if an individual has a desirable franchise in a small to medium size city with attractive demographics, the funds for building that system can be obtained from third parties. The money might come solely from a commercial bank, but more likely it will come from a combination of commercial banks, tax shelters, venture capital firms, insurance companies or even joint ventures with established MSO's. Under these arrangements, the minority entrepreneur can retain control as well as majority ownership. These entrepreneurial approaches would have been preferable to the common arrangement of "renting a citizen."

Some of the largest MSO's in the country have relied on tax shelter financing for building a new system. This is particularly true of the privately held MSO's. In most instances, the capital contribution from the sponsoring MSO is very small relative to the overall size of the project. However, the MSO's that have done this do have a track record of managerial, technical, and financial competence and have the organizational resources to put together the presentation to win the franchise and to subsequently structure and negotiate financing.

By and large, minority entrepreneurs have not seized the opportunity which new cable franchises present and I believe now is a late hour to enter the game. Again, I'm talking about large to medium size. I do not know the exact number of remaining desirable franchises but probably the substantial portion of opportunities in new franchises has already been granted. The remaining franchises are expected to be awarded in the next 2 or 3 years. Moreover, these franchises are in the very large urban system where entry for a firm without a track record would be particularly difficult. Therefore, I am not optimistic that participation of minorities in cable television can be significantly increased through the new franchises mechanism.

My remarks this morning will focus on the second alternative, that is the acquisition of existing systems, where I feel a good opportunity for minority ownership exists.

The cable television industry is highly capital intensive and there is considerable premium in creative structuring of deals. As an example of the creative financing used, some of the largest MSO's in the country have relied on tax shelter financing for building new systems. This is particularly true of the privately held MSO's. In most instances, the capital contribution from the sponsoring MSO is very small relative to the overall size of the project.

In contrast to my views regarding new franchises, I believe that significant opportunities exist for minorities in purchasing existing systems. There are a large number of small- and medium-size cable systems in this country, almost all privately held, mostly by the original owners. As they retire, seek liquidity, or for any reason want to sell, who will they sell to? This subcommittee can take actions to insure that a portion of them will be purchased by minorities.

As I mentioned earlier, tax shelter financing has been used extensively in the financing of the construction of new cable systems. Also, in the last 2 years, there has been an even larger number of tax sheltered financing to purchase existing systems. Tax shelter financing presents a number of attractive features for the minority entrepreneur. Because these deals are generally structured as limited partnership with the entrepreneur as general partner, the entrepreneur has complete control over the business, subject to his fiduciary duty to the limited partners. In addition, because the entrepreneur is transferring the tax benefits to the limited partner, he is able to retain a larger portion of the ownership than would be the case in a nontax oriented investment, such as that available from venture capital firms.

Under the new tax law, there are no longer different depreciation rates for new or used equipment. There is, however, one major difference between tax shelter financing for new or used cable systems and that is the availability of investment tax credit. Investors in new cable television systems receive an investment tax credit equal to 10 percent of the total equipment investment for a new system. The same credit is available for used systems but is subject to a limit of $125,000 in total equipment invested per partnership.

I would like to suggest that this subcommittee consider an amendment to section 48(c) of the Internal Revenue Code to raise the limitation of equipment purchased to $5 million in cases where a minority controlled firm is purchasing directly or through a partnership, an operating cable television system. This would give a needed advantage to minority cable operators in competing for tax shelter funding for the acquisition of existing cable systems.

Let me clarify what the change I have proposed is. At present, the overall limitation on value of used equipment is $125,000. This translates into an investment tax credit of $12,500. A limitation of $5 million is a tax credit of $500,000 if all the property is at least "5-year property." The approach that I have suggested provides several important benefits that I would like to outline briefly.

First, this program does not involve any Government loans, grants or guarantees to any group. It is a direct tapping of private capital. The impact of this change on the Federal budget, even if wildly successful, would be minimal.

Second, the effectiveness of this program resides in the fact that it addresses itself to the most scarce source of capital, equity capital.

Third, the level of managerial and technical resources to buy an established system is considerable less than is required to build a new system from scratch. Hence, this program makes cable television ownership feasible for a larger number of minority owned firms.

I want to thank the chairman and members of this subcommittee for your kind attention.

Mr. MITCHELL. Thank you very much. You mentioned there are a large number of small- and medium-size cable systems in this country, almost all privately held by the original owners. As they expire, they seek liquidity, et cetera. You indicated these could be opportunities for minorities?

Mr. GUZMAN. That's right.

Mr. MITCHELL. Am I right in assuming that a majority of those small- and medium-size cable systems would be in nonurban areas?

Mr. GUZMAN. I believe so. I think that what we are talking about is the purchasing of those systems that were built 15 years ago typically, in mostly rural areas. The urban cable, as you know, is a very recent development. Not only that, because of the 5 million limitation here, what this proposal would address itself to would be to the purchase of a system, selling at probably not much more than $5 million.

Mr. MITCHELL. I am not at all sure that the systems that you refer to are really going to be made available to minorities or small businesses in general. We have testimony to the effect that the original owners who put up rural systems some years ago are now being offered such handsome sums of money that many of them are selling out and the price is right.

Mr. GUZMAN. Well, let me point out, some of the people doing the selling are not only the very large ones themselves, but some of the large tax shelter financing has been recently put together. There are a number of them. I am aware of at least five or six of them. I think that if the minority entrepreneur is able to put together the financing, he can very ably compete in the purchase of the systems.

There is a great deal of trading in cable systems and not all of it is being purchased by the major MSO's.

Mr. MITCHELL. Well, that may well be but I think also in earlier hearings we received testimony to the effect that small businesses in general, minority businesses in particular, have a great deal of difficulty in getting access to venture capital or equity capital. One witness referred to the old boy's club, where it is just difficult to break into it.

Mr. GUZMAN. Venture capital industry is very close knit. This is not. This is offering SBA very strong economic incentive to participate. This gets around the issue of the close knit network of the venture capital community, which I would endorse that statement completely. It is a closely knit community.

Mr. MITCHELL. Do you have any knowledge about cable systems being provided for the military installations?

Mr. GUZMAN. I do not.

Mr. MITCHELL. You have not gotten into that at all.

Are there any questions?

Thank you very much.

Our next witness is Mr. Alex Mercure, president, Mercure Telecommunications. Thank you for being with us this morning.

Mr. MERCURE. Thank you, Mr. Chairman, for the opportunity.

Mr. MITCHELL. We have a copy of your statement before us.

Mr. MERCURE. I will avoid reading it if you don't mind and hit a number of high points. This is a slight modification of an earlier statement that I presented before when I couldn't be here personally. I appreciate the second chance.

Mr. MITCHELL. We appreciate your coming.

TESTIMONY OF ALEX P. MERCURE, PRESIDENT, MERCURE TELECOMMUNICATIONS, INC., AND ASSOCIATION FOR ENTREPRENEURS IN TELECOMMUNICATIONS

Mr. MERCURE. First, let me give you a little background. I personally have been examining cable systems now for about 10 or 12 years. My first capacity in that examination was president of Community College in northern New Mexico when a franchise was about to be awarded. There were no provisions at that time for looking at the whole issue of public access to the cable capacity. It was strictly viewed as an entertainment position. I encouraged a number of my associates in the area to submit a competing application, but in order to do so—they indicated that—at that time you talked about cable to people and you got a blank stare. They indicated that if I got in they would get in. We did. That was the first one. We actually didn't build the system until about 3½ years ago, in a small town called Espanola. That is one of the systems that we currently have owned. We actually have 60 percent of the equity in that company. We have since acquired a franchise in a military base in Florida. We started construction in June, just completed by mid-October. We have about 777 subscribers as of 2 days ago.

It should do a little better than break even for October. We have acquired a number of other franchises which we have not yet built. One of the problems is obviously the issue of capital. I think this is a market for medium to small—somewhat the reverse of what has been said.

I think many of us in small businesses and minorities particularly tend to look at nitches in the market which are particularly beneficial for us. We have competed for about 7 franchises in communities that range from 1,500 to 4,000 households. We think there is a good prospect for that. However, the fact that we have gone after those franchises doesn't necessarily mean we are not interested in a community of 50,000. Our company has basically taken a position that 50,000 and under is the kind of the market we would like to go after. As you get into the larger sizes, obviously, the amounts of money required are phenomenal.

We have the capacity to build the smaller systems and we have the capacity to turn a reasonably good profit. In some testimony presented to you, Mr. Chairman, people suggested there were problems of management. I frankly believe that is not necessarily true. A great deal is made about the question that minorities don't have management skills. Having lived all my life as a member of a minority group, and having been in contact with a great many minority businessmen, I think a greater problem is access to reasonable, adequate flows of capital.

The technical resources in cable are readily available to us. We have had no difficulty obtaining technical resources and we feel very competent in terms of the management of the systems. I don't believe that whole issue is a critical problem.

I have been involved with a number of people who are involved in telecommunications and the formation of an organization which attempts to bring together the technical and managerial skills among minorities which we can share so we can exchange information as well as perhaps do business with each other because a lot of the businesses are compatible.

It is a new organization, the Association for Entrepreneurs in Telecommunications, it is the kind of effort we should do. The cliquishness that occurs in any particular community I think we need to develop that kind of cohesion ourselves.

I would like to focus on a couple of questions you brought up. I think they are important from the standpoint of what cable, as an industry, provides for a community. You said that in testimony presented to this committee that a multiple franchise in a large city is generally not looked on with a great deal of favor. Even where multiple franchises are being considered, the aggregation of units is extremely large still.

For example, if Denver or Chicago were to be broken up into four separate franchises, you still have franchises reaching households that would represent larger communities than most of the United States represents. Right? Maybe, if I were to make a suggestion, large cities ought to break up into even smaller units than four in a city like Chicago.

While I know that that perhaps is controversial to many people in the cable industry, let me suggest that there are important reasons which are part of the whole characteristic of cable which make that suggestion not terribly unusual.

No. 1, we claim that the cable technology permits a community to receive a wide variety and array of programs. We claim that because of that it permits local communities to obtain, including individual families, the kind of entertainment and information communication resources which are most compatible to their needs. You and I know that even though Chicago appears to be a cosmopolitan city, such as Baltimore and New York City, all those cities are basically aligned along neighborhood lines. When you organize a cable system along one line, frankly, the flexibility to provide programming which is most suitable to a particular neighborhood disappears.

As you said earlier, larger is not necessarily better. Bigger is only bigger. That is all it is. It is not necessarily better. The flexibility to respond to local community needs can perhaps be done when franchises are broken up into smaller units. The whole issue of whether the system is profitable or not in my view is a total academic viewpoint. In fact, small systems reach profits faster than larger systems.

I think the critical point is that smaller systems can be profitable, and well managed systems. I think they can perhaps even be more flexible in terms of satisfying community needs.

Third, I think as important as any, it provides an opportunity for much greater participation among the business and entrepreneurial populus, if you will, for bidding on much larger numbers and arrays of opportunities. I think that is probably as much as I need to say there.

Let me focus on a couple of other issues relating to financing. I have made three suggestions, and keep in mind that for example, Mr. Guzman's testimony focuses on considerably larger systems than we do.

We are basically talking about very small systems. We have made three suggestions, and one of them is that legislation should enable SBA to guarantee industrial government or revenue bond to finance communication systems. That, also should provide guarantees for leverage leases for entrepreneurs. The businessman will sell the plant in exchange for a reasonable net cost of money, and pass on the tax credit and depreciation allowances to the lessor. It permits the opportunity to access relatively large sums of money without tapping SBA loans. The benefit there, you are then able to obtain relatively large sums of money at competitive rates using mechanisms which are currently in place. The problem of revenue bonds for minority businesses and many small businesses and with leverage leases is that the people who will buy the bond will generally judge the investment. The investment community generally judges the credit rating of the entity which is going to be responsible for paying them off.

You take a small community like Berino, where we have a current franchise. They have authorized an industrial revenue bond. We are already having some difficulty getting it placed. The principal reason is that if we were a large company with a very strong capital base, there would be no problem. We are an 8-month-old company when it gets right down to it. And, only within the past month or so have any of our operations reached a profitable level. With all justification, they are going to look at our projections and say, that is pretty nice, but right to date, you show no profits, and therefore no ability to assume this kind of 10- to 20-year burden. The guarantee would essentially mitigate against that perception of higher risk.

We feel confident on the basis of relatively short time, the two systems we have in operation, that we can reach those profitable levels. But, to convince the financial community of that is often impeded by a short history and a history that many new businesses have, which is initial operating losses.

The second point I suggest, you expand FCC's efforts in providing technical assistance to minority and smaller enterprise ventures in telecommunications. I think they are in a particularly good position to provide that technology, the management assistance. I reason that because there are new technologies coming along. Our view is that cable systems is not the only technological opportunity in communications that we are going to look at. We think there are other opportunities that are very synergistic with cable TV. The third thing, perhaps large companies should be opportunities for tax credits similar to research and development credits which are available to overcome. In that respect, you are taking a mechanism which has already been created by Congress for research and development, for example one of the instruments used to finance the gene splicing stuff and a lot of great research. This mechanism could easily be applied in this case.

I have not focused on limited partnerships, partly because you have some of the same kind of problems. You have limited partnerships in the case of large businesses that you have with industrial bond and the leasing concept. You end up with great difficulty in placing them. If one were to go for a very large issue, perhaps the difficulties would become less severe.

There is a fourth and final problem I want to raise with you. I talked about bonding and insurance here. That is a very simple problem. But, let me say, with all due respect to Chase Manhattan, and Citibank of New York, and Bank America, which have made very significant investments in telecommunications technology, a million dollar loan is a small one to them. A local bank, you know, will glaze over if you suggest cable financing frankly. They don't understand the business. Local banking institutions have not been terribly receptive to financing small businesses without some sort of a guarantee to back it up, so that you are caught in the middle.

Mr. MITCHELL. The large banks?

Mr. MERCURE. The large banks don't like the small dealers. The small banks often can't handle them. You take the small bank and it is going to lend over $30 million worth of deposits. A $500,000 loan is way past their limits in the first place. There is that kind of thing. Somehow or other we need to reach the skirt, if you need to cover the bond. There is opportunity for minority businesses and small businesses. There are literally thousands of communities that are not wired. There are literally thousands of unincorporated areas of large communities and large population centers. You mentioned the military franchise operations. Florida is a military franchise. We are now looking at two additional military opportunities.

Mr. MITCHELL. Thank you very much. It is very interesting testimony.

If you can, will you sort of walk me through how you got the franchise for this military installation?

Mr. MERCURE. In this case, there was another minority businessman who had obtained the franchise through an 8(a) set-aside. He got the franchise. He was not able to put the financing together or management to operate it.

We were referred to him by a mutual friend, and we sat down and worked out an agreement whereby we set up a new company and both of us invested in it. We proceeded then to get the appropriate approval by the military authorities in that location.

Mr. MITCHELL. Is that a difficult process?

Mr. MERCURE. That is not a difficult process when you are talking about joining another entrepreneur who has a franchise.

Mr. MITCHELL. I was going to ask you about your next attempt.

Mr. MERCURE. The new attempt we are looking at is an open RFP. I suspect we will be competing with the 10 largest companies. It is a reasonably good franchise opportunity. The nonentertainment potential in the military is about as good as the entertainment system, the security system. There, we will probably be competing with the largest ones. I think we can put together a proposal as competitive as any they would put together. Whether or not we can find financing by the time the deadline comes along, we are working on that.

Mr. MITCHELL. Is the decision made by the base commander ultimately?

Mr. MERCURE. The ultimate decision is a designated contracting officer. They have established a way of weighing applications that come to them, based on price for subscribers, based on quality and quantity of services being offered. And, inevitably comes the question of financial responsibility, can the company perform.

Mr. MITCHELL. I am very curious about this. Over the last year, we have seen a decrease in the number of minority contracts with the Department of Defense.

Mr. MERCURE. This one is an easy one for them to do, Mr. Chairman. Most of what they are going to offer is a nonbudget, non-Federal expenditure item. What they are offering to do is for the company to provide service to the residents on base at a rate which the Federal Government doesn't pay for, the residents pay for. Only in the cases where they want wired day rooms and common rooms on barracks or clubs does the Government pay anything for the common rooms.

Mr. MITCHELL. I saw in your testimony something that kind of concerned me. That is a nonrefundable fee to bid on an RFP.

Mr. MERCURE. There are quite a number of RFP's or ads that come out of requesting proposals from cities. Some of them require $100 nonrefundable fee. It sounds pretty reasonable, the blueprints, plans, that you get to prepare a bid would probably cost that much. Some have gone as high as $100,000 in their requests. Well, that kind of membership——

Mr. MITCHELL. That is absolutely prohibitive for a small business.

Mr. MERCURE. That's correct. That is why I put it in.

Mr. MITCHELL. Would you recommend some kind of ceiling on their fee?

Mr. MERCURE. Frankly, I think that the winning franchise ought to pay the cost for putting the bid out. That is a logical and reasonable way to approach it.

Mr. MITCHELL. You also refer to, one of your recommendations was to expand the FCC's effort to provide technical assistance. Can you enlighten me? I didn't know FCC was doing anything in technical assistance.

Mr. MERCURE. They provide very little now. They provide you some help in terms of trying to get through the whole licensing, permitting. Now, they don't have licensing for cables but they do for broadcast licenses. At least, you know, they provide advice. They don't provide much of anything else. Neither does anybody else that I know of. SBA does some; EDA did some technical support. EDA may not be long in the world from actions of the Congress. I would endorse the SBA suggestion.

Maybe it was you who made the suggestion that SBA provide and increase capacity to provide technical resources for management and technical support. The fact is that in terms of getting engineering, technical kind of assistance that you need, if you have a franchise, it is difficult to get it, if you have a franchise and essentially financing. There are a lot of firms out there that do it on consulting contract basis, technical services contract.

There are many engineering firms that will give you some front-end advice, if you will. However, I think the kind of long term sustained effort that I think was referred to earlier—I shouldn't say long term, kind of take off point support—could be very beneficial in terms of helping people build up their capacity to maximize the potential turn around time, or reduce it from startup to profit. That is the initial management.

The assistance probably most needed by people, minority entrepreneurs is not the day to day management of systems. I think the preparation of proposals to be competitive may be the most crucial assistance required.

Mr. **Mitchell**. Just one last comment from me. You are such an interesting witness, I could be asking you questions all day. The man who has gone through it is perhaps the best source of information. But, I wanted to comment, I like your idea about the possibility of large cities having many small units. You are right. Cities are mostly neighborhoods. I am not at all sure in my congressional district that replacement of Lawrence Welk would be received as enthusiastically as replacement of Stevie Wonder.

Mr. **Mercure**. One I saw recently, two systems in this one small city of about 100,000. In fact, we are in the middle of negotiations for one of the systems. It turns out that in that community there are very few Hispanic people because in the other franchise there are large numbers of Hispanic people and they are sharing the same hindend. One community is offering Galavision, which is a Spanish movie, HBO movie channel. They have seven subscribers in that paid tier. In essence, they are offering the same program as the others because it literally could be one system. They don't have separate electronic and channel head-end gear. Maybe it is not necessary. The point, so long as there is that single idea that you offer a program to a community, there is in this open place a neighborhood or a portion of the community which does not really get much benefit from programing that is offered for the entire city.

I think that is the great potential of cable which is to target the service that you give to the clients that you serve.

Mr. **Mitchell**. Thank you very much.

Congressman Daub has joined us.

Mr. **Daub**. I just finished your formal testimony. It is very interesting. I am hear to learn.

Mr. **Mitchell**. It may well be later on as we start to finalize these reports I will be calling on you or writing to you for further advice.

Mr. **Mercure**. Please do. Thank you very much.

Mr. **Mitchell**. Our next witness is Mr. William Douglas, president, Gary Communications Group.

I made a remark in my opening statement that I was glad to see that the air traffic had improved between Gary, Ind., and the District of Columbia. Mr. Douglas was to have been on our panel at an earlier session. His plane was delayed. He came in the door as we closed the hearing. I am very grateful that you were able to come back this morning.

Mr. **Douglas**. Thank you. I think the hearings are very important. That is why I am very happy to return.

Mr. **Mitchell**. Please proceed.

TESTIMONY OF A. WILLIAM DOUGLAS, PRESIDENT, GARY COMMUNICATIONS GROUP, INC.

Mr. **Douglas**. I had earlier remarks in which I covered several subjects and also because of my experience in cable since 1972, I think I would like to cover them again.

Mr. **Mitchell**. Sure.

Mr. **Douglas**. I've been involved in cable television since 1972. For 3 years, I was the owner-operator of the first back cable TV system in a major urban community. As president of GCG and as general operations manager during its 3 years of cable TV operations, I was involved in all aspects of the business.

I now act as a cable TV consultant to a number of black groups around the country who are attempting to start their own cable TV company. Some of the groups have been able to raise only $50,000 locally; and others, such as the company of which I am president, GCG, raised over $300,000 among local investors. With very few exceptions, the local banks view these groups as high-risk companies having no previous track record in the cable TV industry and simply shut the door. The expertise of the various groups are given only a short, and polite hearing before presenting them with a pleasant letter turning down their loan.

I cannot speak with any degree of accuracy for the lack of minority ownership prior to 1972, but I suspect it was as much the same as it is today, lack of financing.

We, as minorities, can successfully package cable TV technical expertise. We can successfully package cable TV equipment financing. We can attain what I consider as essentially a political document, a cable TV franchise; but we cannot close the loop—obtain adequate financing. The financial community simply has difficulty for whatever their reasons—ignorance of cable TV industry financing; a belief that blacks cannot handle the technical operation of a cable TV company; a belief that blacks cannot handle major business operations, et cetera, to provide efficient operating capital to successfully run a cable TV system.

Several factors, other than the presumptions of the local financing community, combine to prevent minorities and small businesses who do not command tens of thousands of dollars from taking an entrepreneurial role in this fledging industry:

(1) The city fathers are seeking far more capability from the new cable TV systems than the mom and pop cable systems of the past. Most cable TV systems in the country are of the mom and pop variety, 12 channels or less. The major cities are currently demanding 60 channel capability and more, though it will be years before they can use even half of that capability.

(2) The city fathers are moving toward the concept of single franchises in most urban communities. There are circumstances that make single franchising desirable. But, there are other circumstances consistent with good business practices that make multifranchising more desirable. Communities that consist of streets, alleys, and aerial plants; or communities that sprawl present no inhibiting technical problems to multifranchising. I wish to remind everyone that the average cable TV system in the United States has less than 5,000 subscribers.

You can only run so many amplifiers down the line before you have to start the system all over again. That means when you start the amplification system all over again, that is basically a new system. Given the kind of electronic spacing that you have allowed each amplifier. Eventually the noise level reaches a critical level in relationship to the video level. At that point, further amplification leads to a deterioration of the signal. You have to reprocess the signal and you start over again. In any major city that will happen, not major city, in any large area that will happen. It doesn't have to be a city, a rural area. Technically, there is no problem with the multifranchising. I think if there is a problem, it would have to be in services.

The 80 : 20 relationship that the IRS requires for corporations to consolidate losses and income from subsidiary companies inhibits meaningful joint relationships with local small businesses.

To overcome these problems, I concur with some of the previous recommendations made to this committee:

One, financial incentives to MSO's to work with local small businesses in terms of ownership and contractural services. Local businesses and MSO's have a complimentary role to play in the development of the cable TV industry.

Two, the FCC to recognize the special nature of cable TV and place limitations on the number of cable TV franchises that an individual corporation can own. This limitation should not be in terms of numbers alone but should be such that it encourages meaningful joint relationships between MSO's and local small businesses.

Three, the larger urban communities should be given incentives for awarding multifranchises with local group involvement. Greater participation by local entrepreneurs means a larger amount of investment money remains in the community. This is especially important to those communities that are having difficulty attracting outside investors and/or maintaining their tax base.

Four, some variation on the 10-percent set-aside concept for Federal contracts for minorities and local businesses should be made part of all cable TV franchises to insure that the communities, minorities, and small businesses derive some benefits from the multiplier effect.

We remain steadfast in our belief that the cable TV industry represents one of the few opportunities for minorities and small businesses to participate in the communications industry in this country, and on a level that their participation is meaningful.

I am hopeful that these hearings can lead to some positive policy changes on the part of the Federal Government to insure the participation of minorities and small businesses in an industry such as cable TV, that has, among other virtues, a tremendous potential for revitalizing our urban communities.

Thank you.

Mr. MITCHELL. Thank you very much. You went into cable in 1972?

Mr. DOUGLAS. Yes; 1972. That was when the first drive for cable TV in the urban community started. We operated under a lot of difficulties. Of course, the FCC had the ruling at that particular time on restrictions on the importation of signals. About that same time the first satellite went up.

Mr. MITCHELL. This was your first venture. Therefore, you had no real management experience in cable.

Mr. DOUGLAS. Not in cable. When we pulled the group together we had 40 shareholders, all of them local. That was an aspect we looked at. What we attempted to do in pulling people together, and we used the concept of sweat equity as well as funds. We realized we needed legal expertise. We brought in three attorneys. We realized we needed financial background experience. We had one accountant, one controller, who was the controller for one of the major steel companies in the area. These are minorities, I should point out.

Mr. MITCHELL. You are spelling out very clearly the point that I wanted to try to make and Mr. Mercure referred to it earlier, the question about lack of management experience, et cetera. If you have got the capital, you buy that. You buy it or you get it through sweat equity. I am not at all sure that the lack of experience is really a formidable obstacle, participation in this.

Mr. DOUGLAS. We still brought expertise. We had to be able to evaluate expertise. We wanted to be able to say whether or not we were getting what we wanted. When we were doing pro formas, we had to be able to evaluate. Everybody asked you for a 10-year pro forma, 5 years, some a month, yearly basis. We had to be able to evaluate what we were getting. We still have a group of people with us. We are able, particularly after the cable TV experience, to go through a financial package with anyone and basically reach a conclusion, whether it is a good or bad financial package.

Mr. MITCHELL. Also in your testimony you refer to the fact that after a certain number of increments have been put into a system, a deterioration begins to take place. You refer to 35 units. Is that the proper term to use?

Mr. DOUGLAS. We have 35 channels.

Mr. MITCHELL. It seems to me, if you are correct, that the cities which are going for a single franchise, are really kind of misleading. You don't have a single franchise. You have a person who builds a series of separate franchising systems and having control over them, is actually building separate franchises.

Mr. DOUGLAS. The desired size of the multifranchise system should determine the number of franchises within the city boundaries. This is easily determined by looking at the cost of building a system. There is a general cost. If it is an aerial plant, you have streets and alleys, you have one cost, an underground system. For example in the District of Columbia, you have another cost. You can look at that and and say these costs will be higher. Those estimates are made before you get started. You say, we need a certain size system in order for whomever comes in to operate. You know, come in and invest his money. Let's take Gary for example. We are talking about a community of 150,000 that is sprawling. We run 14 miles across. We are talking about probably having to set up a microwave link to service a large segment of the community.

Once you go to a microwave, you basically have another system. One set of microwaves leaves this transmitter and goes down to another receiver, comes down to the amplifying system. That is another system.

Mr. MITCHELL. If a single franchise is given for New York City, whoever gets that would really have to build a number of separate systems.

Mr. DOUGLAS. Yes; I am doing some consulting service for a black group in Indianapolis. I think ATC does have that system. The black group there will have an opportunity, after 5 or 6 years to purchase 130 miles of the system, about 1,100 mile system. My understanding is that ATC is designing that system so that 130 miles could be pulled out, company operate separately. I don't think it is necessary to have a total separate set.

With the FCC requirement, we, the cable system operators, still all carry channels required by the FCC. I have to carry NBC, CBS in the area. In the Gary area, we have 10 required channels that we have to carry and any independent TV cable company that forms has to carry 10 channels. This leaves narrow casting, which I think is the essence of cable where you can define specific channel to the needs of the community you serve, that is the balance that gets you to 35 channels—Gary's system.

I still have 25 channels to program. In a multifranchise city, we can share where it is necessary to make sure that our community services are there, the city wants the police reports, the schools, hospitals want a channel. I don't know why your NBC network is here. You can share all of that. If you have your separateness, in this case 25 channels, you can give that to the specific community you are serving in the community.

Mr. MITCHELL. I may come back to that. Let me just get one more question. You refer to certain incentives that could go to cities for multiple franchising. What kind of incentives?

Mr. DOUGLAS. The cities have to realize I think, our community has, that we cannot attract—I mean, one of the goals other than good television signals and nice pictures is to attract the investment dollars. That is what I was speaking of, the incentive for the city fathers is that they have got local capital. Those entrepreneurs that have what is known as sweat equity, they will live there. They will invest in that community. If they can get involved, for example, by doing multiple franchises, you don't have one group of 30 local entrepreneurs fighting another group over this one franchise which happens in a lot of communities, when it could very easily be split up, technically be split up and there could be 60 entrepreneurs. More people are involved that are local.

If I am the head of Teleprompter, the major shareholder, I will request that most of my dollars come back to headquarters. Of course, eventually, hopefully, they will pay a dividend one day. It will come back to me. If there are local people involved they are going to request the same thing. The money will come back to them to go back into the community.

Mr. MITCHELL. Mr. Daub?

Mr. DAUB. Thank you, Mr. Chairman. Who should make that decision?

Mr. DOUGLAS. As to multifranchising?

Mr. DAUB. Yes. Have you found in your consulting experience that you can get along a lot easier with the local political authority than you can with the Federal political authority?

Mr. DOUGLAS. I think in terms of the franchise itself, I get along better with the local people. It is a political kind of document. The local people themselves organize and are desirous of getting involved in it. I think some restraints have to be imposed by the Federal Government. Of course, as an example, they, the local fathers, might want 25 percent of the gross.

Mr. DAUB. Some cities want to own the whole thing. I guess what I wrestled with over three hearings so far, Mr. Chairman, is trying to get some idea as to who makes the final value judgment on the structure or mechanism through which some of these objectives might be obtained to which the testimony has all been aimed, how do you finalize a rule, a law, who executes it to say you break up every city in the country to these potential parts or that is the way the licensing procedure will, in fact, occur.

We wish it to be that way. We organize it to be that way. How?

Mr. DOUGLAS. There are some controls that the FCC exerts right now. We carry certain signals, not because we think they are financially rewarding, but because of FCC regulations we carry all signals that FCC requires.

Mr. DAUB. I don't mean signals. How do we get to the ideal relationship that there can be more in one company, more in one system, 530-mile patches operating in the same county, same city, and how do we find that the minority or the enterprise has a shot at that unless they compete in a normal way and end up buying out?

Mr. DOUGLAS. I think it boils down to whether the local fathers understand that the local investment money is good for the community.

Mr. DAUB. Should they be making rules, it should be local or have local money?

Mr. DOUGLAS. I think you do that through financial incentives. I am not a banker.. I can't speak to the specifics of it. I think they respond to financial incentives. Take the local banker. Very few local bankers know anything about cable. They need incentives to venture into this area. Most local bankers never have more than one experience with a financial package from a cable TV system.

Mr. DAUB. As much as I agree with you, how do we install, to use a term in your industry now, the wire to get to that point? In other words, do we say that the cable is not going to be a township, parish, county, legal jurisdictional matter, and they in turn can set a rule or a political subdivision less than the Federal level is the one that will set the rules for percentage of ownership or percentages of, you know, the school board, so many hours of programing, so many dollars go to the local university. So many dollars of revenue of the contract, monthly operating gross has to go to the city as a return to the taxpayer. Where is that line going to get drawn? What structure can you foresee being the appropriate political law or rule that gives the opportunity to you that you are looking for?

Mr. DOUGLAS. I mentioned a couple of things. One, I don't want to necessarily cut off the multisystem operator because we need his equity to develop the systems. I do think if you start to put in restrictions on the ownership that I referred to earlier, and the FCC currently has a restriction now on the number of TV systems that anyone could own.

These restrictions will aid the diversification of ownership. I am not saying it makes a multifranchising system the only way but it does stop one large operator from controlling thousands of systems.

Mr. DAUB. You are saying there could be a cable rule of the same kind and the same nature that would be Federal?

Mr. DOUGLAS. There are already some Federal restrictions. Of course, there would be tax incentives that could be set up that even encourage local involvement. I can see the Federal Government encouraging local involvement that way. I think it is kind of hard. These tax incentives do not encourage the multisystem franchising directly, but it does encourage local involvement. I think once you start to encourage local involvement, then I think the multisystem franchise will follow after that. At this point, you don't even get encouragement of local involvement. That is why we turn to the citizens. It becomes commonplace.

Mr. **Daub.** I take it you are more concerned about the smallness of ability to compete as opposed to being a minority. If there was a way a small businessperson, you could package all of your expertise, all servicing, programing requirements, you would have an equity in terms of capital, the 700,000 that it takes to string a wire and get ready to go.

Mr. **Douglas.** I think at this point, the minority and small businessmen are locked in this process.

Mr. **Daub.** Anytime you just wake up in the morning in the next 2 weeks and you come up with another idea for structure, that is what I am interested in. Mr. Chairman, I am trying to find out what the mechanism could be for access you are looking for, not wish they were there. That is only half the problem. And once you have identified the problem, the next problem is to solve it. I think you have to go to political structures to solve it. I don't think you can set up loan programs to solve it.

Mr. **Douglas.** I think it is in the loan incentives. Local bankers have to be involved in cable. There has got to be some reason for them to get involved. I think once you set up some kind of tax incentives for local involvement and some type of restrictions on the number of systems a multisystem operator can own the multifranchise concept just follows. I don't think there is anything unnatural about it.

Mr. **Mitchell.** I have to raise one other question. When you started talking about what the Federal role, if any, should be, I am forced to think of what would be the impact of deregulation on small and minority businesses, potentially cable. If indeed the FCC should do away with the idea that you can't own TV, you can't own the radio, you can't own the daily newspaper, all in the same locality, suppose we get to that point in deregulation. What would be the impact on small and minority businesses?

Mr. **Douglas.** I have never interpreted it, Federal deregulation, that way. I think we should set up minimum rules.

Mr. **Mitchell.** I would like the most extreme case.

Mr. **Douglas.** We would be wiped out, I think basically. He who had the money would rule. There is also those of us who are caught in a tizzy where we have a need for cash or what have you, and there is this fellow sitting in the corner who happens to have a whole lot of money. We end up slowly being moved out of the industry. I think there has got to be a minimum set of rules under which we all can operate, not just leave us in the extreme case, as you say, flowing with the availability of funds. In 7 years, we are going to have to, most systems are going to have to rebuild because electronics by their very nature will be obsolete. I am saying we should rebuild. Some people will operate with obsolete equipment. We should be rebuilding. We have to come up with funding.

If a guy says, don't worry about it, I will give you a million dollars, you won't have to worry about it, we will take care of all of it for you, we might feel that our desire for local ownership could wane under this type of pressure.

Mr. **Mitchell**. Thank you very much. It has been very informative testimony. Thank you.

Our next witness is Mr. Zakee Ameer Rashid, executive vice president and director of franchising, Telecable Broadcasting of America.

I spoke to you earlier, as you came down the corridor to my office. Thank you very much for being with us this morning. I think all of us have a copy of your statement.

TESTIMONY OF ZAKEE AMEER RASHID, EXECUTIVE VICE PRESIDENT, DIRECTOR OF FRANCHISING, TELECABLE BROADCASTING OF AMERICA

Mr. **Rashid**. Good morning, Mr. Chairman, distinguished members of this committee, and ladies and gentlemen. I am coowner of a cable television system in the city of East Cleveland, Ohio, a suburb of Cleveland, Ohio. I have been involved in the cable business for approximately 3 years, beginning my experience with a major multiple systems owner. My capacity with that company was a governmental relations specialist, better known as a token minority member of the franchising team.

During my experience, I learned a great deal about the franchising end of the business, and I decided that I would not sell my neighborhood, but would pursue the franchise myself, independent of the MSO. After a rather remarkable chain of events, with a handshake and a very serious commitment, I joined partnership with three other gentlemen who were planning to pursue the Greater Cleveland, Ohio, franchise when it came up for bid.

My partners are presently Mr. Thom Darden, a professional football player with the Cleveland Browns football team; Mr. Benjamin Davis, a brother of Angela Davis, a former Cleveland Browns football team member, also with the Detroit Lions; and Mr. Alfred Quareles, who was an experienced account executive with an ABC affiliate, TV 5 in Cleveland.

My partners provided me with the necessary capital and allowed me to work full-time on the franchise for East Cleveland—and believe me, the key word is capital. When you combine the manhours, as well as the cash, the amount invested up front with no guarantees of success equaled well over $60,000. And, because our situation was in a sense very unique, I would like to share this with you.

East Cleveland is a community of approximately 40,000 people; it is part of the 10th major market in the United States. Fortunately, the East Cleveland population is made up of 98-percent minorities, which assured some minority participation. Unfortunately, we fell prey to the undefined rules of cable television franchising.

The first step we took was to contact the city to determine if there were any existing franchise agreements. Although a city may not have the cable television services, I have heard of cases where franchises have been granted with few, if any, guidelines on construction periods.

After a positive note from the city determining that there were no franchises in existence, we initiated a letter to the city commissioners requesting them to hold hearings to establish guidelines for the bidding process and to identify the companies that were interested. The city acted upon our request, and in doing so, we found out there was an individual who had tried to get the franchise back in 1975, and for some reason, which we later discovered to be money, could not get his bid passed through the city commission.

Since there were no State or Federal guidelines to follow, the city developed its own, as follows:

First, they wanted to hold hearings to decide what the companies should offer; second, they wanted to allow the companies to give presentations; third, then select a consultant to help the commission define the offers they had received; fourth, accept the bids; and then fifth, vote to award the franchise.

During the period of time the city used to develop their procedures, one of the rival companies was circulating an initiative petition in the community to place the company on the ballot to have the uninformed citizen award his company a 25-year cable television contract with very weak city controls. In addition, they filed an injunction to stop the city from awarding a cable television franchise through the commission to the company of its choice.

TBA at this point decided to join the city to appeal the injunction, and was very successful in having the injunction denied. The city commission at this time was very much split on their decision of which company the award was going to, and a heated political war broke out. This war resulted in two of the five commissioners being sued on totally unrelated matters by a former commissioner. While the case of the two commissioners was being heard by the Ohio State Supreme Court, after six attempts, the award was given to TBA, Inc.

Our company immediately filed a protest with the Cuyahoga County Board of Elections to determine the legality of the initiative petition to place a second award of a cable franchise on the ballot. Although we lost the appeal, we participated in a full-scale campaign, and on November 4, 1980, we defeated the initiative petition by a 2-to-1 margin.

These legal battles cost our company tens of thousands of dollars and a lot of wasted time. It also led to one of the commissioners being ousted from office, and the other case being dismissed on technicalities.

A referendum petition filed by our opponent to force the award of the franchise to be overturned until we ran in a special election missed by 35 signatures.

Mr. MITCHELL. They do things rather vigorously in your city; don't they?

Mr. RASHID. Yes. So, now we finally have a legal franchise agreement with the city of East Cleveland, and we felt that we had won a major victory. But, the real test was yet to come. Financing would prove to be a test that ultimately would lead to either the failure or success of a new minority business in the city of East Cleveland. Because of the coverage received in the major newspapers of Cleveland, our company gained a lot of positive publicity, and as a result, we were approached by various financing concerns. Our position was to first contact the Small Business Administration to provide interim financing to prepare projections. Although the criteria for getting this loan was difficult, we are truly thankful to the SBA because they took time out to listen to us, understand our needs, and to make a very much needed loan to our company.

After extensive work with consultants and other cable television companies, we prepared and submitted a proposal to a Washington-based MESBIC. Negotiations began, and after much effort, a workable agreement has been reached. The combination that led to success in our case resulted in a working relationship between the Small Business Administration in Cleveland, Ohio, a Washington-based MESBIC, and a local bank, which had cable lending experience. Construction has begun in East Cleveland, and we anticipate a November 20, 1981, launch date.

The necessity for minority participation in the cable television industry cannot be emphasized enough. The ownership aspect of this business is the only way we have to control the large amounts of cashflow that cable television systems generate. These controls will allow development of educational opportunities, as well as hands on experience at the school level to insure future job opportunities in areas such as cable television construction, installation of services, marketing and sales, and one of the most important aspects of cable television—programing.

I have read of 108-channel systems and up being proposed, and although there is not enough quality programing available now, the future looks much brighter when we are guaranteed an opportunity to participate in that area because of ownership. Community leaders must be held accountable to the citizens they represent and insist that minorities not just become rent a citizen and a few well-to-do people become wealthier, but ownership and control by some real percentage to be requested and met before the franchise is awarded.

Mr. Chairman and members of this committee, there are some areas which I feel you can be of a great deal of assistance to the potential as well as existing small businessmen in this industry. Although I cannot at this testimony mention all of these areas in detail, I will touch on those that I know of and have had experience dealing with. Regulations, for one.

Filing fees that the cities are requesting are ridiculous amounts of money—nonrefundable—to even consider a company's proposal. They range from nothing to $10,000.

Mr. Daub. Excuse me, $100,000 or $10,000?

Mr. Rashid. I have heard of $100,000, $10,000.

Most RFP's, or requests for proposals, already have acceptance fees which are due after the award to cover the cost that the city spent in developing their cable television policies.

I would also like to mention the franchising procedures. I feel that some policy should be adapted nationwide to outline the basic procedures that would allow the small businessman to calculate his costs in advance. Procedures as they now stand vary from city to city and State to State, which is unfortunate because there is no way for an entrepreneur to be able to calculate the very real cost of franchising. Failure to do so could often result in frustration and a lost opportunity.

Although in the area of regulations there is much more that can be said, I would like at this time to begin my comments in the area of financing. I feel that the equity requirements that are now stipulated by the bank and the Small Business Administration should be given some consideration to become a little more flexible. Most entrepreneurs that are involved in cable television systems spend so much money in the area of getting the franchise that often when the first loans are required to begin the actual construction aspect of the cable television system, the entrepreneur's funds have been exhausted. This puts the entrepreneur or the small cable television businessman in a position of having to sell off large portions of his ownership to satisfy the equity requirements.

Most assuredly, if that equity could be financed into the long-term debt structure, it would definitely leave the businessman more of his profits to send toward the repayment of the bank loan, rather than to be sending out money to other equity partners who may or may not be interested in the actual operation and ownership of the cable television system.

I also hope, Mr. Chairman and the committee members, that you will continue to work to assure the continued availability of MESBIC loans. I know of no other cable television business that is owned by minorities in this country that has not been financed without the assistance of MESBIC's. This is one of the most effective ways to provide money to minority entrepreneurs and small businessmen in this country who need this sort of assistance. And, with the MESBIC method of assistance, as well as finance, I feel that this is one of the surest ways to continue the growth of minority participation, not only in the cable television industry, but in the broadcast industry as well.

As an additional suggestion, I would like to recommend that some of the talented men in the service corps of retired executives program become familiar with cable television. Some of the areas that we definitely need help is in evaluating and preparing proposals for the city councils and city commissions. We need assistance in evaluating our cash flow projections. We also need help in the area of cable television billing systems so that you can make recommendations of companies and successful systems that you know about; equipment suppliers and their reliabilities; contractors of the various services, as well as helping to develop management systems that would work for the new businesses.

In my closing statement, I shall say that there is no problem with MSO's and minority businesses working together in communities, but most assuredly there is a difference in working for someone and working in cooperation with someone.

Thank you for this opportunity to express my views and to share my experiences with you. I hope that my testimony will provide additional insight, which you will utilize to help small businesses in my industry.

Mr. **Mitchell**. First, I want to compliment you and your partners for perseverance through the years. It is remarkable that you were able to hold together. It is the kind of thing that I admire a great deal.

Mr. **Rashid**. Thank you very much.

Mr. **Mitchell**. Do you have any other business except cable? Are you in radio or anything else?

Mr. **Rashid**. No, sir. In fact, I have pursued and obtained another franchise since the East Cleveland franchise has been granted, Jefferson Township, a township of Dayton, Ohio. We expect to start operating next year. I wanted to address some statements Mr. Guzman made relating to minority management. I think Mr. Douglas also addressed it when he expressed that there are management companies that could be hired to consult with small businesses and minority businessmen. That is really no problem. That goes back to the same attitude of minority people playing quarterback on football teams, that sort of thing. It is not realistic. There are quality consulting firms in the industry that you can locate, do business with. They are expensive but they do exist.

Mr. **Mitchell**. I have a concern. It is not a question. I really don't know how to handle this. From your testimony, it appears that the cities get two whacks at you, one in the filing fee and one in the acceptance fee.

Mr. **Rashid**. Those two are correct. That is not all. They control your rates, when you can raise your rates. You pay annual percentages of your gross revenues to the city. The city has a lot of regulations of cable.

Mr. **Mitchell**. Let me ask you. Your filing fee may range from $10 to $100,000?

Mr. **Rashid**. Yes.

Mr. **Mitchell**. What is the range on an acceptance fee? Do you have any idea?

Mr. **Rashid**. It would depend on the community. In East Cleveland we have a $5,000 acceptance fee. There was no up front fee. In Jefferson Township we had I think a $3,500 acceptance fee. There was no up front fees.

Mr. **Mitchell**. But, it is possible for a city or local political subdivision to require up to $100,000 filing fee and actually could require $100,000 acceptance fee, right?

Mr. **Rashid**. That's right. There is nothing to prohibit them from doing that.

Mr. **Mitchell**. A quarter of a million dollars has gone out——

Mr. **Rashid**. Before you even see any TV. That troubles the small businessman. You never know what is going to take place because when you go into a city, wanting to become involved in the local TV business, you don't know what to expect, unless we develop guidelines to at least give an individual some type of indication as to what he will be confronted with so he can financially prepare himself and administratively prepare himself.

Mr. **Mitchell**. Would you see the Federal Government recommending guidelines, getting into this very thorny area of local control, Federal "intervention?" Would it be of any value at all if the Federal Government established just some guidelines in terms of filing fees, acceptance fees, what rates should be without mandating them to the local political subdivisions? That would be helpful?

Mr. RASHID. Yes. A lot of the franchising activity takes place before it even gets to the commission or city hall chambers. That is part of my job. I am involved in that as much as Teleprompter or any other company. I understand you don't wait until it comes to city hall before you get to assuming. You assume the notice when you know there is a franchise open.

A lot of things take place behind the scenes that often pop up when you get to commission chambers, such as fees to have your proposal submitted.

Mr. MITCHELL. Thank you. You may have one or two other questions.

Congressman Daub?

Mr. DAUB. I am just hopeful that you will grow and prosper and that you will develop cable opportunities in other communities, because I take it that when you did your second one, you went for some local investment in the second community.

Mr. RASHID. Yes; we did. I feel that is one of the strongest motivational points, I think to minorities as well as small businessmen in their communities, is that you have to try to keep the dollars there. If we look at this country realistically that will be the key ultimately to the success of our country, small businessmen becoming involved, employing people in the community, circulating dollars through his hometown.

Mr. DAUB. Do you see that as an advantage in comparison to the larger cable operation, that essentially go to the larger urban communities now, the smaller cable, particularly that which is locally owned will ultimately have more success in modernizing, staying with the community as it changes?

Mr. RASHID. Yes. Then you are held accountable not only by the particular governing board. You also are held accountable by citizens in the town who watch the TV. People can't call the president of Telecom in his house. People call me.

Mr. DAUB. The chairman of this subcommittee realizes as a public servant, it has been said, we understand what local citizens can do to local representatives. We appreciate it. I think your point is well taken. I wonder if there isn't conflict on something you said earlier, if in fact there is local control, yet, you say, the origination and acceptance fees and/or the limitations on the local company's ability to raise rates controlled by the city or county organization presents a problem. Would you have it any other way?

Mr. RASHID. No. You just have to deal with the problem.

Mr. MITCHELL. Would you yield for a question?

Mr. DAUB. No, Mr. Chairman. I have a small business related hearing for small business persons who can't get pensions when they are elderly. That Aging Committee is now in process. I have heard the other witnesses' testimony. I am most interested in the result and commend your leadership in this area for minority business.

Mr. MITCHELL. Thank you very much for spending some time with us.

I would appreciate it if you would provide me, not today but later on, a listing of the myriad of local conditions that can be imposed.

Mr. RASHID. I would be more than happy to.

Mr. **Mitchell**. This is the first concrete thing we can deal with. It seems to me this subcommittee ought to send a letter to the FCC laying out this whole problem and suggesting that they start, at least to begin to study the possibility of putting up some general guidelines, even though they can't mandate them on the local communities.

Mr. **Rashid**. I agree with that. I think a lot of cities would adapt certain guidelines and regulations if they were there for them to reach and grab. If they are not there, then you have the input from big dollars and people will come into your community, open offices, do a lot of grassroots level lobbying. They start to listen to that. One guy will say do this, some guy says do that, some guy says do both of them. A lot of them don't make sense, but they do. We are pursuing the Cleveland system. We will end up with a major part of that system.

Our main concern right now is the equity structure as it sits right now. The ability to repay those loans is definitely there. We are talking about 25-year ownership of a cable TV system. There is no problem with the repayment. It is just the ability to get the system and then keep the ownership, instead of having to sell it off because of the equity requirements. That is the only reason why most of the small businessmen end up with such small percentages of their businesses, strictly because of equity requirements. The money has to be there. If it wasn't there, you couldn't pay the equity people out.

The money is there, the banks are not flexible enough, I don't know if it is because of policies they are controlled by or what. But, the equity stipulation prohibits minorities from obtaining the loans from the banks that have that money.

Mr. **Mitchell**. Congressman Daub wished you well and hoped that you would grow. I don't do that. Just based on your testimony this morning, I don't have to wish it. You are going to succeed. I can tell it. You are going to be a tough, aggressive businessman.

Mr. **Rashid**. Thank you sir.

Mr. **Mitchell**. Thank you.

Our next witness is Mr. John Mansell, Jr., editor of Cable TV Regulations.

Thank you for being with us. We have a copy of your testimony before us.

TESTIMONY OF JOHN MANSELL, EDITOR, CABLE TV SECURITY NEWSLETTER, PAUL KAGAN ASSOCIATES, INC.

Mr. **Mansell**. Thank you for having me. I am delighted to be here.

Mr. Chairman, I am the editor of Cable TV Regulations. I would like to address some of the franchising and financing issues that you discussed earlier this morning. I think time and again the same issue is coming up.

The major problem for small businessmen coming into cable, there is problems, financing, financing, financing. It is a chicken and egg problem here because no city official wants to award a franchise that might not be built, and the consultants who advise cities respond to that concern their No. 1 concern is financing.

They are reluctant to recommend a company that doesn't have the financing in its responsibility to the city's request for proposals.

Then the city is confronted with the situation of having to make an award to a company that hasn't been recommended by its consultant. That may generate pubilicity in the newspapers. It may connote to the public at least in the city councilman's mind that there is some hanky-panky going on beneath the surface because the city councils aren't taking the recommendations.

At the same time the city councilman is responding to the citizenry as well. The last thing he wants is a system that is not going to be built. He wants to have a showpiece for his city, a system that is a little better than the system in the next community over.

The other major problem, however, you have to look at the other side of the ledger. There are different economies of scale to be realized I think in order to attract two-way cube, index services. Those services are difficult to provide in a community that may have less than 20,000 to 40,000 homes.

I think this is one reason why you see so many suburban communities banning together, 10 or 11, let's say, in Oakland County outside Detroit, maybe 8,000, 9,000 homes out of 100,000 homes in each of them. They have more leverage to secure for themselves better proposals from, I guess you have to say, the bigger companies.

The other problem that I have heard a lot of this morning is the up front fees that cities are demanding. That is a big problem. The FCC has long had a franchise fee ceiiing of 3 to 5 percent. However, it is questionable how long that ceiling is going to remain in place. For years attorneys in the District of Columbia have been predicting that ceiling will be eliminated, and it will be eliminated shortly.

That would make the cities happy. They are all demanding as much as they can get.

Mr. MITCHELL. Who is making the big push to eliminate the ceiling?

Mr. MANSELL. I think you have to believe it is the cities. It is in their interests. They are trying to get an 8-percent franchise. It is pretty much the going rate. The way they will typically structure it, have the percent franchise fee, allowable under FCC rules and then at additional 3 percent will go, or 1 or 2 or 3 percent, for the establishment after nonprofit access corporation, something like that.

I think you mentioned earlier the FCC possibly considering this whole issue of Federal, State and local relationship to one another. There was in fact in the midsixties, or maybe it was—yes, I think late sixties, early seventies, there was a Federal-State-local video committee.

It did just that, considered the relationship the tradeoffs between the different levels of regulation of the cable business.

Mr. MITCHELL. Was that a published report?

Mr. MANSELL. Yes; there is a published report. On the ownership; yes, tomorrow, as a matter of fact, the Commission is going to be considering whether or not to allow local broadcasters to participate in franchising in their communities as well as ownership restrictions.

I would like to get back to what I originally wanted to speak to, the security business.

We think that cable may be a $20 billion industry in 1990. That is operating revenue. That compares to 1979 when according to FCC data the industry was generating $1.8 billion in revenue.

Others have testified, however, this is an industry in transition. Maybe as many as 70 percent of the operating cable systems only have 12 channels and maybe 50 percent of the industry serves fewer than 50,000 subscribers per system.

Incidentally, these are all opportunities from the refranchising stage for entrepreneurs to come in, look, you have got a 12-channel system. I am willing to build a 54-channel system if the incumbent operator is willing to. There are still thousands of franchises available in markets and in suburban communities.

While the popular press writes glowingly of home shopping, telebanking, and energy management, other interactive two-way services, they are all in the earliest stages of experimentation and development. While many may be technically feasible, it is by no means clear they are economically viable.

Indeed, there are those who believe that these services are the way of the future and always will be.

I would like to distinguish some of it. I would like to distinguish hope and hyperbole from the reality of the current state of the art by discussing what appears to be the first two-way service taking shape—residential burglar and fire alarm service. The Wall Street Journal recently reported that home security operations are the most successful to date of cable's expansion into services that have little to do with TV. That is true, but cable TV security today is a very small business.

According to our research, as of mid-1981 there were 17,290 cable security subscribers in under 100 operating systems. In the first half of 1981, the industry grew at a rate of 660 homes per month with installation averaging over $900 and monthly monitoring fees of $16. Our semiannual census showed the following:

According to the conventional wisdom, only 2 to 3 percent of American homes have burglar and fire alarm systems and only about 40 percent of those systems are monitored by a central station facility. The remainder provide just a local alarm. Yet in survey after survey, cable companies are discovering that 60 to 80 percent of the public are interested in medical alert and burglar alarm devices.

Environmental conditions—psychology, geography, and economics are fueling the growth of security. Not creating a boom, but contributing to a steady increase in the protection of homes and businesses. Why?

RISING CRIME RATES

According to Department of Justice FBI statistics, there were 3.7 million burglaries last year, an increase of 13.9 percent over 1979. Residential property was targeted in 67 percent of the reported burglaries, a 19 percent increase over 1979. Daytime residential burglaries from 1976 to 1980 were up 32 percent. In 1980, burglary victims suffered losses estimated at $3.3 billion. The average dollar loss per burglary was $882. Burglaries for the first half of 1981 were up 5 percent over the same period of a year ago, according to FBI data released October 29.

POPULATION MOBILITY

With the population moving every 4 to 5 years and the ongoing trend toward the Sun Belt, people find themselves living in unfamiliar surroundings and the folks they left behind in cold belt cities have fewer neighbors they have known for years. Security benefits in both directions. The more mobility in the land, the less secure people are bound to feel. Or, the less mobility, the more people will develop a fortress mentality.

RISING EMPLOYMENT OF WOMEN

By 1990, it is estimated that 78 percent of women in America will be working. More homes will be vacant during the day—a better target for burglaries.

Steep inflation has been a boon to the home security business, and the current recession is unlikely to reverse the trend. As inflation erodes confidence in the dollar, the value of assets—homes, silver, antiques, fine art, coins, and other collections—has risen accordingly.

By comparison, a good security alarm system seems inexpensive—a smart purchase for middle-income homeowners and an imperative for the most affluent.

Other demographic patterns also bode well for security—an aging population, an increasing number of single person households, for example.

Now that more homes are being equipped with alarms, making sure each one works properly and is properly used by its owners becomes more critical to the homeowners, the alarm installer and the community as a whole. All over the country, municipalities have passed false alarm ordinances, setting a limit on the number of false alarms in 1 year, for example, the owner of a system is fined every time the police must respond to an alarm and find no evidence of criminal activity.

The need for credibility, and the financial resources to back it, is one of the prime motivating forces pushing cable operators into security. They see an opportunity to bring to the security industry the maturity it has not yet attained on its own. In some ways, cable TV has yet to mature in its own right.

But it, too, is growing rapidly in the Nation's major cities. As a result, it is on a course of convergence—and in some places, collision—with alarm companies.

On the one hand, it is an opportunity for alarm dealers because many cable operators have neither the capability nor the desire to develop the marketing and technical expertise to enter residential security. They are interested in joint venture and lease channel arrangements with security companies.

On the other hand, many of the smaller alarm dealers perceive cable as a competitive threat because of its credibility and marketing prowess. With 6,000 alarm companies, the industry is highly fragmented. Fewer than five firms gross over $100 million a year.

It is an industry that has yet to experience its first major wave of mergers and acquisitions.

So what does all of this have to do with small business? We think that by 1990 as many as 6.25 million homes may be paying $20 a month for home security via cable TV, accounting for $11.5 billion in revenues. That is out of maybe $21 or $22 billion in revenue for the entire industry. In addition, to the demand factors we cited, growth will be spurred by the development of low cost easy-to-install wireless systems that are more reliable than wireless systems currently on the market.

In the interim, there is a tremendous demand for highly skilled installers of hardwire alarm systems that often take two men 1 or 2 days to install.

One of the leading cable TV security companies, Warner-Amex, has managed to hookup 4,300 customers in Columbus, Ohio, and initiated its own training school which has graduated 80 to 100 installers.

Warner is in the process of gearing up to market security in Dallas, Tex.; Houston, Tex., St. Louis County, Mo., and Cincinnati, Ohio. It is looking to hire 480 installers, many of whom will be able to command salaries of $11,000 to $20,000.

In order to achieve its goal, Warner has commissioned the Cablevision Training Center in St. Charles, Miss., to begin training cable security system alarm installers. I talked with the center's programer. He told me they are ecstatic of the potential growth of training installers for this business.

Installers aren't the only way to do this. There is no reason why many of those local alarm companies couldn't tie in with the cable operator to less a channel. I am sure many of them will do so. Many are negotiating today.

Mr. Chairman, I know it is getting late.

Mr. MITCHELL. We are OK.

Mr. MANSELL. You have plenty of time. OK.

I have provided you with a list of most of those TV security marketers. Many of those are small businesses and local markets just starting up. There is a number of alarm companies that I haven't listed that are local companies, negotiating with cable companies.

Those particular companies here are seeking to make deals on a national basis market by market. There are many alarm companies in Columbus, Ohio. They wanted to negotiate for that market.

Arnold Steele, the center's program coordinator, sees an "explosive growth" for alarm installers—250 to 300 for Warner alone over the next 12 months and over 1,000 in the next 2 years. It is estimated to cost $300 a week for 6 to 8 weeks to train an installer who will earn $1,098 a month when he enters the work force. Steele says Warner is very sensitive to minority hiring and affirmative action. Students will be recruited to reflect the percentage of minorities in the cities where they will work, according to Steele.

In addition to the need for installers and monitoring personnel, a whole new class of middleman marketers and equipment suppliers is being established all of which are small businesses.

These marketers hope to establish joint venture, lease channel and affiliate relationships with cable companies to market security and many of the equipment suppliers are developing modems, control panels and other equipment specifically designed for cable TV security.

Thank you again for the opportunity to testify. I hope I have provided sufficient commentary and background information about cable TV security to highlight the potential of the industry. I look forward to your questions.

Mr. MITCHELL. I have a few questions. Thank you.

On page 5 of your testimony, you referred to the need for credibility and the financial resources, et cetera. Aren't you suggesting that that is the big guys only? When you start talking about credibility, financial resources to back it, aren't you almost suggesting that it would be your largest companies only that would get this?

Mr. MANSELL. Not at all and precisely because of the necessity of making arrangements with local people to provide the service.

Mr. MITCHELL. That really leads me into my next question. You say the local small security alarm companies would want to tie in. What would be the advantage of tying them in? What would be the advantage to a big cable owner to tie them in when for relatively small cost, they can provide that service themselves?

Mr. MANSELL. Well, I would disagree it is necessarily a small cost, particularly if you don't have the expertise already built up in that business.

Mr. MITCHELL. You have got Warner-Amex establishing its own training schools, doing all that is necessary to provide that security.

It just seems to me that, given the push toward domination of the industry by a limited number of big companies and given the fact according to your testimony that cable security is a high growth area, it would be "good business," and I put that in quotes, "good business" for the bigger companies to build their own systems, train their own people.

Mr. MANSELL. I think there is a number of different advantages of working with local people. First of all, there is a tremendous shortage of installers, competent, trained installers, and the local companies, many of them already have the expertise.

One of the things they have lacked to penetrate the residential market is the ability to mass merchandise. If they can tie into a cable system, develop sort of a trade name, cable security for the community, it is a tremendous—it could be a tremendous advantage.

Right now if you want to get an alarm system and you look it up in the phone book, you see the names of 55 different companies, it is very difficult to market, but if you can establish the credibility, and a cable company knows it will be in that market for at least 15, 20 years with the franchise, with many alarm companies you don't know if they will be out of business in a couple of years. It behooves the alarm industry to work with cable operators.

Mr. MITCHELL. Yes. I am coming from the opposite point of view. Sure, it would be to the advantage of the small alarm companies to get locked in but let's look at Warner. According to your testimony Warner has started cablevision training centers to begin training system alarm installers.

Do you have any idea of the length of time on their training?

Mr. **Mansell.** Yes; I believe it is 6 to 8 weeks, $300, approximately a week for 6 to 8 weeks of training.

Mr. **Mitchell.** Then that large company has really awarded—it has no incentive to work with the small alarm company.

Mr. **Mansell.** The problem, there are not enough installers in a given market. There are alarm companies who do not want to work with cable TV and at this point the industry is so new that the alarm industry is concerned that the cable industry equipment is not reliable.

Many cable operators themselves even though they believe equipment is reliable are starting out operating it. They want to make sure they get the bugs out before they work with anyone else or expand in a big way. Most of those systems were provided by one company, TOCOM, and Warner really pioneered its own equipment with a small company. Only now are some of the equipment suppliers beginning to develop equipment.

It is not on the market. That is another reason why the industry is slow to develop.

Mr. **Mitchell.** While you see this whole security and alarm system as an enormous advantage, potential advantage for small businesses, I guess out of my own paranoia, I see a big company moving down the line developing its own equipment and training its own people. That is the training business.

If that paranoia—I don't know whether paranoia can be accurate or fought—but if my thinking is accurate, I would see this really as a danger to small business more than a boon. That is as one perceives problems.

Mr. **Mansell.** I think that is how the alarm industry proceeds. In fact they have lobbied successfully in Nashville, Indianapolis, Yerson County, to provide alarm services.

I think it is fair to point out not one market has cable TV security service now and as a rule the public hasn't benefited because in none of those markets is the cable operator working with the alarm company yet. There are a number of problems, I think, technical problems right now.

There may be a limit on the number of alarm companies that can tie into a given cable security system. The cost is relatively high, based on the equipment that is available.

That is why some of these joint ventures have not yet materialized but cable companies are very concerned about liability, and they have been stretched thin with the franchising process and with all of the other opportunities they have. It may well be that a company like Rollins will come along at some point and negotiate lease channel arrangements with cable companies. It is very early in the day for this business.

Mr. **Mitchell.** Mr. Humphries.

Mr. **Humphries.** No questions, Mr. Chairman.

Mr. **Mitchell.** Thank you very much. That is very interesting testimony.

I think we need to look at this business of ancillary services relating to cable TV. There could be a whole lot of things that could be of potential benefit to small businesses.

In addition to security and medical alert services, what other kinds of—I call them ancillary services, do you foresee?

Mr. MANSELL. Energy management, possibly paging services, selling, advertising. Those are some of the things that I think are going to come along sooner rather than later.

I think those are the primary businesses that are coming along right now.

Mr. MITCHELL. Thank you for your testimony.

Our last witness this morning is Mr. Michael Jarard, the chief executive officer of the Satellite Communications Systems, Inc.

You have been very patient, arriving on time and staying with us. Thank you for being with us this morning.

TESTIMONY OF MICHAEL JARARD, PRESIDENT, SATELLITE COMMUNICATIONS SYSTEMS, INC.

Mr. JARARD. Mr. Chairman, I would like to extend my appreciation for having an opportunity extended to me to appear before your committee this morning. I must apologize for my failure to appear upon being requested at the last hearing.

However, I did not beyond any reasonable doubt fail to take advantage of the second opportunity.

I will very briefly run through my prepared testimony, after which time, I will make myself available for any particular questions you might have relative to the cable TV industry.

I might add, aside from being president of Satellite Communications Systems, enjoying 6, going on to 7 years in the industry, I currently have served 6 years ago today, the period which marks my entry into the cable television industry, even the most optimistic daydreamer would not have been able to envision today's cable-TV scenario. Annual industry revenues now top the $3.5 billion mark.

Eighteen million subscribers now pay at least $7.95 average cost for basic service and by 1990 will be paying an additional minimum $10 additional per month for pay-per-view service.

It is projected by some analysts that by the year 1990 the average monthly cable bill will be $75 and the average number of subscribers will top the 40 million households mark, generating revenues of approximately $36 billion exclusive of advertising revenues.

One-way and two-way teletex, currently in the experimental stages could represent a $1.7 billion business by the end of the decade. A likeable growth pattern in security, health, and fire services could top the $1.5 billion mark by 1990.

Advertising revenues which show promises to steadily build to over the $400 million mark by 1985, and hitting $4.5 billion within the following 6 years, shall continue to bolster the above astronomical revenues.

A typical example of the megabucks character of this industry is illustrated by the projected revenue statistics for the city of Chicago as prepared by my company.

I might add I serve on the technical committee for the city of Chicago, for the advisement of the cable TV issue.

Mr. MITCHELL. What do you do with your spare time?

Mr. JARARD. After working many hours a day, I don't know what I have left.

Chicago currently has 1.3 million television households in the inner city with a projected build cost of $400 million. Subscribership should bottom out at approximately 800,000 subscribers valued at today's market value of $1,000 per subscriber. The system once completed and if marketed for resale, will be valued at a minimum of $800 million, with a possible astronomical capital gain in 6 years.

That capital gain could run anywhere from $300 to $400 million.

The use of industry mathematics, will confirm the initial value of the license to build if it was marketed shortly after receipt, would sell at a market value of $65 to $80 million.

We further project that the system will generate revenues of one-half billion dollars per year or an estimated $6.2 billion over the term of a 15-year franchise.

On a smaller urban or rural scale the cable television industry is the only industry in which the opportunity prevails for a white American to become a millionaire every day.

I might add, sir, this is a matter of fact. Like all other, megabuck industries where large dollars are infused and extracted on a daily basis, there are certain attitudes and practices which pose problems for local small and minority businesses which desire to operate or supply goods and services to the cable industry.

The rush for cable gold has attracted a broad spectrum of interest from the commercial industry community and has given birth to mergers, new upstarts from other industries and unscrupulous practices by major veteran participants in an attempt to harness and protect their current turf.

Very little consideration is given to the violation of current antitrust laws or guidelines and one can on any given day reiterate numerous situations which could be compared with the most classical cases, heard to date.

Inasmuch as the character of this industry is rapidly changing and new players are more accustomed to the megabuck game, the prospects for future participation in the cable industry are diminishing. Manufacturers are merging to generate the strength necessary to continue to sell at competitive and high volume levels; more products are being ferried offshore in search of cheaper and higher quality labor markets, and the small pioneer vendors have suddenly found themselves in the midst of a total uncompetitive marketplace.

Federal agencies must interpret and enforce the various antitrust and other regulatory acts in an attempt to preserve and protect the systems which former legislators worked so hard to create. I am not recommending undue or unjust regulatory action over any segment of this industry, however, we must agree that the monetary gains available in the cable TV industry are unmatched in any other area of our economy and as such will attract monopolistic tendencies.

Today there are no more than four, maybe five, minority hardware and equipment vendors operating nationally. This recent development of a multibillion dollar revenue base with unlimited growth potential should be tapped to adequately support programs involving minority ownership and participation in the hardware, software, and services areas of this industry.

Five years ago, cable was an industry with a questionable future. Today it is the future. All people, whether majority or minority, rich or poor, should be allowed to participate.

It is difficult to conceive that the private interest groups that are rapidly buying into the cable industry, will be any more considerate of small or minority business than they have been previously. Your top 14 cable companies, mostly controlled by outside interest or broadcast interest, are in a mad rush to secure territorial franchises, and do not have time to nourish, cultivate, or stroke the small business community, unless it is mandatory to secure a franchise.

However, small businesses are the principal makeup of our cities, communities, and local economies. Some portion of the billions of dollars which this industry will extract from these communities nationwide should be filtered back in.

Regardless of the entree of major corporate entities into this industry, the next 3 years will provide enormous opportunity nationwide for minority and small businesses to compete in various phases of the industry. Major multisystem operators such as Cox Cable, Warner-Amex, and a limited number of others who are governed by franchise agreements calling for the inclusion of small and minority business participation, must adhere to these agreements and thus will provide some opportunity for the launch of new endeavors by the small business community. This concept must be developed and perpetuated to preserve the small business format.

Historically, minorities and urban small businesses have had no access to information pertaining to the cable industry and have subsequently not been in position to evaluate its potential as a frontier where opportunity is rampant.

Minorities must be educated about the opportunities which are available in this industry and taught or informed of the intricacies of the problems associated therewith.

Cities currently wield the greatest power to regulate and create opportunity for local or minority-owned businesses to participate in this industry. However, local political bodies have a tendency to overlook the wealth of opportunities which accompany the cable process.

Until the time that public officials are fully aware of the many facets of this industry, and have acquired thorough knowledge of its impact on the communities they serve, we cannot expect to harness the many opportunities related to its growth.

Mr. MITCHELL. Thank you very much.

You refer to the fact that every day there are violations of current antitrust laws. Without naming names, without naming a company, could you give me an illustration of that kind of violation that is taking place, with particular reference to cable?

Mr. JARARD. Yes; I can. I happen to serve in the area of the supply of hardware and equipment to various cable companies throughout the United States. In fact, I ship to about 46 cities. I do business with about 100 cable companies. I have had the opportunity to have been a supplier of goods, mainly hardware and equipment 6 years now.

Certainly on the antitrust regulations, there are such laws as the Robinson-Patman Act, the Sherman Act, which prohibits certain basic manufacturers, certain distributors, from creating certain acts which will retard competition within industry.

These particular acts are frequently violated everyday. The trend is the same in the hardware and equipment end as it is in the franchising end. One wishes to be larger.

They rush for the dollars. My ability to supply your product quicker at a cheaper price than my competitor, certainly leads me to turn my back on whatever governmental regulations I might be, or I might fall under the jurisdiction of and subsequently I will turn around and I will dump product on the marketplace at cost.

Mr. MITCHELL. May I interrupt you for just a minute?

Mr. JARARD. Sure.

Mr. MITCHELL. You supply hardware?

Mr. JARARD. I supply hardware; yes.

Mr. MITCHELL. What type of hardware?

Mr. JARARD. I supply 88 percent of the components that it takes to build the complete cable system, cable, electronics, and so forth.

Mr. MITCHELL. Are you saying that a corporation now that formerly you supplied wire to can then form a subsidiary to buy its own wiring and thus knock you out? Is that the violation of the antitrust laws?

Mr. JARARD. Your very large companies will dictate to the smaller manufacturers as to who they will sell to, distributors, what the territory should be, and in a lot of instances might even dictate what the marketplace is of a particular market in the marketplace.

Certainly, this is a violation I think of all antitrust acts.

Mr. MITCHELL. How do they manage to do that, dictate what the marketplace should be?

Mr. JARARD. If you supply, let us say for instance, if you are a major supplier, and you are able to manufacture a particular product. Let's take myself for example. Let's say I am a major distributor in industry. I am a household name. I go to several small manufacturers that manufacture products that need my services to market their product. I will turn around and tell them, yes, I will market your product but I will not market that product if you let John Doe handle that product also.

This is the type of competition within the marketplace. Another approach they might use, which happened to us on numerous occasions, we have probably went out, made sales to various customers in the industry. They will come back and undercut our bid on a certain product at a cost that we know that they are paying to the manufacturer.

In other words, they will sell the product at cost. Certain times of the year certain manufacturers will dump *x* amount of product in the marketplace, knowing that the 4, 5, 6, 7, 8, 9, 10, other distributors are out there who are probably paying more than 5, maybe 6 to 8 percent more than what they are paying in as much as their inability to buy in volume quantities.

Mr. MITCHELL. They simply cannot compete.

Mr. JARARD. They simply cannot compete. This has been the climate in the cable industry for probably the last 3 to 4 years. My own experience has been that we are successful in the cable industry now because we have weathered the opponents that have been against us in the industry.

I can't say there has been anybody as against me by my being a minority. At the present time I doubt whether 95 percent of the industry know that I am a minority supplier. What we have done initially, knowing that we are the only black company in the cable industry that was supplying supplies, well, then we integrated our sales force and when we went to major trade shows, which we exhibit at all major trade shows, we use a salt and pepper sales team.

Of course, also, when we send out releases to the industry as to what our intentions are in the industry, et cetera, we make sure that we compose those news releases so that they will not tip our hand.

Inasmuch as, although I ship to probably 7 out of the 12 top MSO's the major accounts are made up by smaller cable systems throughout the country. And certainly, the owners and operators of small cable companies, while they have certain biases, certain ideas of how they want to deal, who they want to deal with, so I would say it has been very difficult for us to come out and say we are a minority, a black supplier, and hope to have maintained our business relationship with these people under that particular format.

To give you one particular example, I have one account that I have been, I guess I have written maybe $80,000, $90,000 worth of business in that account over the last 12 to 13 months. I knew they had a requirement to make a major purchase of converters. Of course, this was an account that was located in the State of Texas, which has been a very good State for me. As long as I was handling that account on the telephone and I never showed up down there in person to either open a sale or close a sale, I had no problem in doing business with them.

The minute I showed up on a personal basis, this happened to be a deal, a $400,000 and certainly you want to make a personal appearance, close the deal if you possibly can and this was the format that I followed, and although these people didn't directly outright say, well, look, Mike, we don't want to do business with you, et cetera, because we prefer to do business with a white company, they indirectly got the message across to me.

Unfortunately, in a few months later after they had made a few in-house mistakes, they still had to come back to me to buy the same product but other than that product I am a member of the Texas CATV Association, also. The word filtered back to me as to what my problem was and where my problem laid.

I would say this, the antitrust violations of the industry are not sliding toward any particular ethnic group but it is the ruthlessness of the industry itself.

Your big guys are getting bigger, they are merging, trying to buy up as many smaller companies as they can because this is a big buck industry, where the industry will yield $36 billion in revenue from subscribers alone. Certainly, in materials and supplies we will be looking at probably another few billion dollars a year.

Mr. Mitchell. Let me ask you, have you had any offers to buy up your company?

Mr. **Jarard**. At the present time, no. I have had offers as a result of the pressures that are on some of your major suppliers in the industry. I have had offers to joint venture. However, we have refused offers because we felt like this: we have now, for once, minorities are being written into franchises over the country and now minorities are able to get a toe hold in the cable industry.

As a result of the mandatory requirements that are written into the franchises in your major cities if we were to joint venture with a couple of large companies that approach us, certainly we would shut the door on other minorities coming in.

Mr. **Mitchell**. I guess I jotted down a question but I think you possibly have answered it. That is, why are there so few minorities in the business of supplying hardware equipment?

Mr. **Jarard**. Because minorities are not familiar with the cable game, they are not aware. Generally, they do not market the products that are synonymous with cable; not that they cannot. I would say probably by cable being a rural ball game over the years they probably had a problem trying to find sources to go and sell the product. It is a very easy game to get into. I entered the game with $50, remarkable as it might sound and today we do over $10 million in sales.

Mr. **Mitchell**. That is excellent. That is a real big success story, no question about it. But would that same kind of chance prevail right now for a minority?

Mr. **Jarard**. I would say this, maybe yes, the same opportunity prevails in supplying goods. I can sit here and I can probably itemize 10 different ways where a person can become a millionaire.

Mr. **Mitchell**. My specific question was, and let me give you a little bit of background on it. In light of the fact that this is a mushrooming business with an enormous potential for making money, do you think the same opportunity for supplying hardware and software would be available to a minority firm today as was true in your case several years ago?

Mr. **Jarard**. Yes. The only thing, the catalyst that will make it become a reality today is in every RFP being issued by a major city that they write in the requirement that your major cable companies that are the recipients of those RFP's must provide opportunity for small business.

Mr. **Mitchell**. Absent those guidelines, those criteria imposed at a local level, would the same opportunities exist?

Mr. **Jarard**. I would say no.

Mr. **Mitchell**. One last question. On page 3, the last paragraph, you say that regardless of the entry of major companies into this area, the next 3 years will provide opportunities for businesses to compete in various phases of the industry. What about ownership?

Mr. **Jarard**. I have been a strong supporter of the ownership issue ever since I have been in the cable ball game. I disagree with all the myths that have been circulated relative to black participation in the cable industry, black ability to be successful in the cable industry.

I have the distinction of dealing with cable people on a daily basis, and of the many accounts we handle, certainly, you become very close to these people and you certainly develop a knack of being inquisitive as to how they came into the business.

I would say currently out of most of the independent operators, most of the independents that are coming in today have had no prior background in the cable industry.

Cable is a political creature and inasmuch as it is a political creature it is very simple to get a franchise. All you have to do is know someone who is influential in the local party in the local town. That means that in any suburb for any small rural environment if you know the mayor, if you know the trustees, et cetera, it is a very simple thing for you to go in there, convince them. Let's say you might have to bring in a partner.

Mr. MITCHELL. And have access to the financing.

Mr. JARARD. Well, for, with high ties, financing is not a very crucial problem.

Mr. MITCHELL. You are coming back to my original question. In this paragraph you say, enormous opportunities. I am saying, are there opportunities for minority ownership?

Mr. JARARD. Yes. There is opportunity for minority ownership everywhere. The reason why a minority ownership has not gone further than it has today is No. 1, your consultants are not acquainted with minorities. They do not understand the character of minorities.

They do not understand the demographics of minority communities. Let me say this. We keep up with the franchising ball game because depending on what company goes in with the franchise determines whether I get some of their business or not. Everyday an RFP will cross my desk. Everyday we get a chance to evaluate the consultants who wrote that RFP or who had jursidiction over the RFP, et cetera.

You have some major consultants that are serving as consultants to your major cities that I would not come out right and say they are anti-black but in as much as they are totally unacquainted with blacks, black process, what blacks are all about, you know, they sort of find ways to intentionally write them out of the ball game.

Take the city of Chicago. I sit on the technical board. This is a very hot issue, a very hot issue. We have a consultant in there that recommended the city could only be divided into four franchises. He did not recommend four. Of course, when you sit in the city council meeting, I asked him why did he so staunchly recommend that the city be divided four ways. He could not give a satisfactory answer.

I asked him. I said, project you have 800,000 subscribers in this town. We know a cable can be profitable with 2,000 to 3,000 subscribers on your old technology and new technology in which we are discussing interactive systems. I said, what do you figure at the bottom line for a cable subscriberwise to be cost effective?

Of course, you know, one of the VP's admitted, well, there is a good possibility we could recommend 20, 30, maybe 40 companies. My next question, why did you recommend only four? They said, well, we recommended four because we are following the guidelines of the political fathers, No. 1, and No. 2, well, then, we felt that demographically, this was the only number that would be viable for system operators to come in and deal with.

Of course, when I told him, well, sir, you know, I made the issue with you that cable operators would come in here and bid on those franchises if you divided it into 20 different packages.

Of course, he politely bowed out and said, I am not going to debate this issue with you, Mr. Jarard. Chicago is a town which could very easily accommodate 10 franchises.

Mr. MITCHELL. Almost every large city that I know of has hired a consultant in preparation for wiring the cable. Out of your vast experience, you have dealt with the consultant in Chicago. You have dealt with other consultants. What is their background?

Mr. JARARD. Every consultant—the consultant does look to the future and in looking to the future, he does more than just consult on a local franchise.

Mr. MITCHELL. What do you mean by that?

Mr. JARARD. When the cable companies have problems they call in a consultant to give them various information or formats, et cetera, in the various phases of this business. Take a consultant for Chicago, for instance. That consultant has all your major cable companies listed as his clients.

Mr. MITCHELL. Would that be generally true of consultants in most cities?

Mr. JARARD. That would be true of most consultants around the country. It is tough to walk both sides of the street. If you walk both sides of the street, certainly, well then you have to make recommendations that would be influential in someone's behalf.

If I was going to protect my future what I would do, certainly, I would make recommendations that were beneficial to those people that I knew that I would be receiving work from.

Mr. MITCHELL. If the consultant has the major corporations as his other businesses, obviously he is going to tilt toward a system which would maximize the potential for anyone of his other customers to utilize.

Mr. JARARD. Yes, and I view that as conflict of interest.

Mr. MITCHELL. I would think it ought to be.

Mr. JARARD. What I am saying is that blacks today and blacks tomorrow, as long as the system is as it is today, and handing out awards of franchises, et cetera, you are always going to run into that, bias.

Mr. MITCHELL. Questions?

[No response.]

Mr. MITCHELL. Thank you. It was very interesting testimony but very disturbing testimony.

Mr. JARARD. If I can be of any further service, Congressman, don't hesitate to call me.

Mr. MITCHELL. Throughout these entire hearings I have had the feeling that we shore up one end or make one opening for minorities in cable TV. As fast as we get that open, there is another thing that closes it. We try to deal with cities in terms of having them write in requirements for minority participation.

Yet, while you deal with that, you have a consultant do that, or that you come with a franchise operation so as to almost preclude minorities from participating, so if you get your minorities in, if you can get by the consultant, get the city to do the kind of approach that you want, then you have got to go to the financing industry.

It gets more and more complex with each hearing.

Mr. **Jarard**. I think our biggest problem, particularly MSO's, I don't think we will be able to deprogram the big companies being able to lobby and within the influence of your local city councils, et cetera. I would say this: I think we can concentrate on other areas of the cable game that can be very lucrative.

I think we can concentrate on disbursement of cable revenues that can be lucrative to a total community. Take like Chicago, for instance, it has five black banks. Cable revenues coming from cable would be a half billion dollars a year.

If it were made mandatory, wherein to their contractual agreement that that cable company let some portions of those collected revenues sit in those black banks for 7 days, Congressman, that could turn around, totally turn around the relationship that those banks would have with their communities.

It would turn around the deterioration of communities. It will enable the banks to lend money to other small minority ventures or small business ventures, et cetera. You are talking about $36 billion in revenue. We are not saying, you know, harness it in with any other programs that anybody else has not been harnessed with. But like Chicago, 60 percent of the revenues come from minority communities. My question is, what are you willing to put back in?

There are so many different ways that you can sit down and approach the overall spectrum and then turn around, associate it with revenues, associate with the industry going in there and such things as, say, leased channels.

If you can, visualize an insurance broker who gives public seminars on insurance and he does it as a public service for 1½-2-hour sessions per week. Alone, in fact, he is able to get the public exposure and address himself to a captured audience, 100,000 to 120,000 people, or more at a time, the insurance agency he is affiliated with will become very well to do overnight.

Mr. **Mitchell**. Thank you. I get so fascinated by this learning experience that I could almost sit all day just raising questions. You have been an extremely helpful witness.

Mr. **Jarard**. Thank you very much.

Mr. **Mitchell**. Thank you very much.

This concludes the third and last hearing on cable by our subcommittee. Thank all of you for your participation.

[Whereupon, the subcommittee adjourned, to reconvene subject to call of the Chair.]

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